PUBLIC VERSION

Before the
COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service	)	Docket No. 2005-5 CRB DTNSRA

DOCKET NO. 2006-1 CRB DSTRA
ORAL TESTIMONY AND CROSS EXAMINATION EXHIBITS FOR

Steven Blatter

Senior Vice President for Music Programming,
SIRIUS SATELLITE RADIO INC.

Witness for Sirius Satellite Radio Inc.

SIR NSS Ex. 6

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the matter of:	
Adjustment of Rates and Terms for Preexisting Subscriptions Services, and Satellite Digital Audio Radio Services	Docket No. 2006-1 CRB DSTRA

Room LM-408
Library of Congress
First and Independence
Avenue, S.E.
Washington, D.C. 20540
Monday,
June 11, 2007

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE JAMES SLEDGE, Chief Judge
THE HONORABLE WILLIAM J. ROBERTS, JR., Judge
THE HONORABLE STAN WISNIEWSKI, Judge

1 please be seated.
2 MR. KIRBY: Good morning, Mr.
3 Blatter.
4 THE WITNESS: Good morning.
5 DIRECT EXAMINATION
6 BY MR. KIRBY:
7 Q What is your full name?
8 A My name is Steven Gary Blatter.
9 Q And where are you employed, Mr.
10 Blatter?
11 A I'm employed at Sirius Satellite
12 Radio.
13 Q And what is your position there?
14 A I am the Senior Vice President of
15 Music Programming.
16 Q What did you do professionally
17 before you came to Sirius?
18 A Immediately prior to Sirius, I was
19 the Chief Strategist for a media consulting
20 company called Sabo Media.
21 Q All right, and before that?
22 A Prior to that, I spent all of my

1 career as a programmer in terrestrial radio.
2 Q Okay, did you specialize in any
3 particular format?
4 A Unlike most radio programmers that
5 I've come in contact in my 20 years, I
6 actually -- who typically specialize in one
7 format, I've actually had the opportunity to
8 program in a number of formats particularly
9 country music and rock music.
10 Q When did you join Sirius?
11 A I joined Sirius just about four
12 years ago.
13 Q Okay. And what are your
14 responsibilities as the Senior Vice President
15 of Music Programming?
16 A I'm responsible for the music and
17 non-music content, including approximately 150
18 on air host plus all the interstitial pre-
19 produced elements you might hear in between
20 the songs as well as the overall packaging
21 each of our 64 commercial-free music channels.
22 Q You mentioned you have 150 music

1 hosts. Are there other people that work for
2 you or under you, I guess I should say?
3 A Yes, there are.
4 Q How many and what do they -- just
5 in general terms, what are their functions?
6 A Yeah. Well, immediately below me,
7 there's a tier of Senior Directors of
8 Programming, two of which essentially split
9 the 64 commercial-free channels among
10 themselves and they're responsible for the
11 day-to-day programming of those channels.
12 There's also a third Senior Director who
13 operates more in a operational capacity and
14 reports directly into me.
15 Below the Senior Directors are
16 Directors of Programming and they each are
17 specialists in a particular genre of music,
18 whether it be country, jazz, rock and so on.
19 And reporting into each of those Directors of
20 Programming are what we refer to as Format
21 Managers who typically oversee the programming
22 of anywhere from one to three channels.

1 There's also a team of coordinators who
2 support all the programmers in the department,
3 who are responsible for handling some of the
4 nuts and bolts of producing each of our
5 commercial-free music channels.
6 Q And then is there a group -- I
7 think you mentioned in your direct testimony
8 which we'll get to in just a second, of talent
9 and industry relations.
10 A Yes, there's a separate group
11 called the Talent and Industry Relations
12 Department that is primarily responsible for
13 working directly with the music community
14 which, you know, I'm defining as consisting of
15 the record companies, the artist management
16 companies and publicity people to handle the
17 booking of artists, interviews and live
18 performances at Sirius and in some cases if
19 somebody were to call Sirius and not know who
20 a particular specialist was for a format,
21 let's say it's an independent artist who
22 wasn't familiar with the inner workings of

1 Sirius, they would call the Artist and Talent
2 Relations Department and they would refer them
3 to the appropriate cohort.
4 MR. KIRBY: Your Honor, since I
5 mentioned the witness' direct testimony, I'd
6 like to have that passed out at this point and
7 if I heard correctly, and I'm looking to Mr.
8 Joseph to correct me here, I believe this
9 would be Exhibit -- Sirius Exhibit 36, Sirius
10 Exhibit 36, your Honor.
11 (Sirius Trial Exhibit 36
12 marked for identification.)
13 BY MR. KIRBY:
14 Q Mr. Blatter, do you recognize
15 Sirius Exhibit 36 as your written direct
16 testimony in this proceeding with attached
17 exhibits?
18 (Witness proffered document.)
19 A I'm sorry, could I have the
20 exhibit number again?
21 Q It should be on the cover, I
22 believe. It's Exhibit 36.

1 A Yes.
2 Q All right, and that is your direct
3 testimony, correct? You can trust me.
4 A Yes, it is.
5 Q If you look from the back of the
6 last tab, you will see that I believe what you
7 can identify as your signature.
8 A Yes, it is.
9 Q And that indicates that you
10 executed this document on October 30; is that
11 correct?
12 A That is correct.
13 Q Mr. Blatter, one of the trues of
14 life is that time passes and I'd like you to
15 help me perhaps bring this statement up to
16 date a little bit. Turn first, if you would,
17 to page 2, the second line down in paragraph
18 2, up at the top of the page. Now, you were
19 just testifying as to the number of employees
20 that you supervise and it says there that you
21 supervise approximately 200 employees. What
22 is the approximate number today?

1 A The approximate number today is
2 250 employees.
3 Q And that's just the result of --
4 what caused that difference in the number?
5 A Actually two things. One is
6 we've, you know, added additional staff to
7 support our growth. We've also converted a
8 number of outside contractors to become part
9 time employees over the last several months.
10 Q All right. Turn, if you would, to
11 page 7, paragraph 14, please. And paragraph
12 14, Mr. Blatter, you're listing music stations
13 devoted exclusively or almost so to music
14 recorded before 1972. Should there be -- and
15 you mention two, Sirius Gold and 60s
16 Vibrations. Should there by any additional
17 channel identified there?
18 A Yes, there's one additional
19 channel called Elvis Radio which is a channel
20 that plays all Elvis Presley.
21 Q All right, and turning over --
22 actually, beginning at the bottom of that page

1 in paragraph 15, we have a list appearing at
2 the top of page 8 of other music stations that
3 make substantial use of pre-`72 recordings.
4 Do you see that list?
5 A Yes, I do.
6 Q Is that list current?
7 A There are three channels listed
8 there that are actually no longer available on
9 Sirius.
10 Q Which channels are those?
11 A They're Rolling Stones Radio, the
12 Who Channel and Standard Time.
13 Q All right. Starting from the
14 bottom there, what happened to the Standard
15 Time slot?
16 A The Standard Time slot recently
17 was converted into a channel we call Siriusly
18 Sinatra, which is a Frank Sinatra branded
19 radio station that plays a substantial amount
20 of Frank Sinatra's music.
21 Q All right, and then what in the
22 world happened to the Rolling Stones and the

1 Who?
2 A Well, both of those -- the Rolling
3 Stones channel and the Who channel were meant
4 to be limited run channels from the get-go.
5 Those channels were developed in conjunction
6 with the artists as a way to work with them to
7 promote at the time -- both bands had released
8 new albums and were touring the US and they
9 felt that having their own radio station on
10 Sirius that there were some, you know,
11 promotional benefits to that and so these
12 channels were put on the air to sync up with
13 their albums releases and US tours.
14 Q And eventually that rationale
15 evaporated?
16 A Well, their tours ended. Their
17 new released had kind of run their course and
18 as did the channels.
19 Q All right. Moving down if you
20 would, to paragraph 18 on the same page where
21 you're talking about that Sirius has developed
22 channels and programs in conjunction with

1 well-known artists, we talked about the Who
2 and Rolling Stones that those channels are no
3 longer functioning. Should anything be added
4 to that paragraph to bring it current?
5 A Yes, we recently announced that we
6 were going to be co-developing a radio station
7 with a band, the Grateful Dead, so a Grateful
8 Dead channel will actually be launching later
9 this summer on Sirius.
10 Q All right. And then the last of
11 these updates, if you'll take a look at page
12 9 over to page 10, paragraph 22, and there
13 you'll see you're talking about omissions
14 forced by the constraints on territorial
15 radio. Do you see that paragraph?
16 A Terrestrial radio, yes.
17 Q Terrestrial, excuse me,
18 terrestrial radio, I'm sorry. The next few
19 sentences --
20 CHIEF JUDGE SLEDGE: Are you
21 suggesting that terrestrial radio is
22 territorial?

1 MR. KIRBY: I'm suggesting, your
2 Honor, that these glasses may not be exactly
3 what I need. I'll have to think through the
4 implications of the question.
5 BY MR. KIRBY:
6 Q While I'm doing that, Mr. Blatter,
7 do any changes need to be made in the next few
8 sentences to make this paragraph current?
9 A Yes, since this testimony was
10 written, there is actually a country radio
11 station in Los Angeles now. New York remains
12 without a country radio station.
13 Q What about the classical -- work
14 your way through the programming.
15 A Also, in the classical genre,
16 Philadelphia, Houston and Atlanta remain
17 without a classical station but one was
18 recently added in Detroit.
19 Q All right.
20 A Otherwise the remainder of that
21 paragraph is correct.
22 Q And I'm hoping with those changes,

1 we believe that this written direct testimony
2 is true as of today?
3 A Yes, it is.
4 Q All right.
5 MR. KIRBY: Your Honor, I would
6 move that admission of Sirius Exhibit 36
7 consisting of his written direct testimony
8 with exhibits.
9 CHIEF JUDGE SLEDGE: Any objection
10 to Exhibit 36?
11 MR. HANDZO: No, your Honor.
12 CHIEF JUDGE SLEDGE: Without
13 objection, it's admitted.
14 (Sirius Trial Exhibit 36
15 marked for identification was
16 received in evidence.)
17 MR. KIRBY: And your Honor,
18 various parts of this had been designated as
19 confidential but I think we're going to pare
20 that down substantially.
21 //
22 BY MR. KIRBY:

1 Q I would ask you, sir, Mr. Blatter,
2 to turn to page 17, paragraph -- I will see
3 what paragraph it is, paragraph 38.
4 MR. KIRBY: Your Honor,
5 originally, all of paragraph 38 had been
6 designated as confidential but at this point,
7 I'd like to focus attention simply on the
8 first sentence of paragraph 38 in which the
9 witness identifies six channels that kept
10 track of the information involving contacts
11 with the record labels that then appear in the
12 chart on the next page.
13 The witness has indicated that the
14 numbers on the chart need not be preserved.
15 This is on page 17 and 18, your Honor. The
16 witness has no -- I proffer, your Honor, that
17 the witness does not have confidentiality
18 concerns with respect to the contents of the
19 chart itself, but he believes it would be
20 competitively disadvantageous to identify the
21 particular channels that kept track of this
22 information as appears in the first sentence

1 of paragraph 38, both because it would
2 interfere with relations between those
3 programmers and the record label people that
4 they deal with and because it would open the
5 door for XM to exploit the fact that Sirius
6 has been recording and making use of these
7 contacts in their context with these record
8 labels.
9 So, your Honor, we would move that
10 the first sentence of paragraph 38 be
11 identified as confidential under the Court's
12 order. And that is the only portion of this
13 Exhibit.
14 CHIEF JUDGE SLEDGE: Any objection
15 to applying the protective order to the first
16 sentence?
17 MR. HANDZO: No, your Honor.
18 CHIEF JUDGE SLEDGE: Without
19 objection, the motion is granted. Mr. Kirby,
20 that's the kind of precision on the protective
21 order that we've been seeking all along.
22 Thank you.

1 MR. KIRBY: Thank you.
2 BY MR. KIRBY:
3 Q Mr. Blatter, what qualified you to
4 be Senior Vice President of Music Programming
5 at Sirius Satellite Radio?
6 A What qualified me is not only my
7 experience in multiple numbers of music
8 formats, but also my background. For a few
9 years during my career, I was the head of
10 programming for a national radio network
11 called MJI Broadcasting which gave me exposure
12 to pretty much ever genre of music, much like
13 we have at Sirius where we offer, you know, a
14 number of genres in music as part of our
15 service. And also, you know, I had an
16 excellent track record in my time in
17 terrestrial radio and a proven ability to, you
18 know, create compelling radio stations.
19 Q Well, do you think that your
20 experience in terrestrial radio translates
21 into what you're doing at Sirius?
22 A I think my experience in

1 terrestrial radio and also the relationships
2 that I've developed over the years with the
3 record industry is very helpful to me. Many
4 of the principles that I learned as a
5 programmer in terrestrial radio are applied in
6 our day-to-day programming at Sirius.
7 However, at Sirius we are able to clearly
8 offer a much greater variety of music channels
9 than what we were able to, you know, offer at
10 terrestrial radio and the mere fact that our
11 radio stations at Sirius are commercial-free
12 as well, I think, differentiate them.
13 Q All right. You mentioned your
14 dealings with the record labels. Have you
15 dealt with representatives at the record
16 labels over the years?
17 A I've had extensive relationships
18 throughout my career with record company
19 executives, both at, you know, New York based
20 record labels, Los Angeles based record labels
21 and because of my experience in country music,
22 I've dealt with the national based operations

1 of all the major record labels as well.
2 Q Are there particular components or
3 units within the labels that you tend to have
4 dealings with?
5 A Typically, most of the major
6 record labels have separate departments that
7 are staffed with radio promotion executives
8 that either work in the three locations we
9 just talked about and they also have regional
10 promotion executives located throughout the
11 country calling upon radio stations within a
12 particular region.
13 Q And what are they trying -- I'm
14 sorry.
15 A And I've dealt with all types.
16 Q All right, I didn't mean to step
17 on your answer there. What are these
18 promotional executives trying to get radio
19 stations to do?
20 A Typically, one thing and one thing
21 only and that is they're seeking air play on
22 these radio stations for the artists that

1 they're promoting at that time.
2 Q Do these same units within the
3 record labels continue to deal with the people
4 you supervise at Sirius?
5 A Absolutely. The typical promotion
6 person that calls Sirius are the same radio
7 promotion people that are calling terrestrial
8 radio stations.
9 Q And what are they asking Sirius to
10 do?
11 A The same thing they ask
12 terrestrial stations, which is, you know,
13 "Would you be interested in playing this
14 particular artist's song", that they're
15 promoting at that time.
16 Q Now, are they primarily calling
17 you directly?
18 A No, if they were to call me
19 directly, I probably wouldn't have much time
20 to manage my staff and lead the department,
21 but I do delegate that responsibility to each
22 individual programmers that work for me.

1 Q Okay. Well, that leads me then to
2 suggest that we turn back to that paragraph 38
3 where we marked the first sentence as
4 confidential. That would be -- that first
5 sentence was on page 17, but I actually want
6 to direct your attention to the chart
7 contained within that paragraph that appears
8 on page 17. Are you there, Mr. Blatter?
9 A Yes.
10 Q All right. Mr. Blatter, what is
11 this chart -- what does this chart displaying?
12 A Well, I asked the programmers of
13 the channels mentioned there to record the
14 number of times they were contacted by a radio
15 promotion person at the labels that have
16 called upon us and you can see for this given
17 week which began October 16th of last year,
18 there were approximately 170 promotional
19 contacts for that week, plus another 108
20 mailings which included CDS and other
21 promotional materials that were sent to us by
22 the record companies.

1 Q Now, how did this particular week
2 -- was there something special about this
3 particular week?
4 A No, nothing special about that
5 week at all. In fact, the amount of
6 promotional activity between the record
7 companies and Sirius has only increased since
8 this sample was done.
9 Q Okay, and how do you know that?
10 A That's been reported to me by my
11 programmers who keep me abreast of the
12 activities between themselves and the record
13 companies.
14 Q All right, now the third -- if you
15 look at the left-hand column, you talk about
16 e-mail and instant messages and then calls and
17 then you see something called promo mail and
18 CDS, singles, concert tickets. Explain what
19 that entry means, if you would, please?
20 A Well, it includes -- you know,
21 Sirius doesn't or rarely would ever pay for
22 music. CDS or sometimes MP3 files will be

1 sent to the programmers for their
2 consideration for air play. There also are
3 other mailings we might receive that would in
4 some cases be advertisements for the songs
5 that the record labels are promoting at that
6 time. And then as one way to garner interest
7 of our programmers, the record companies will
8 often invite myself or my programmers to see
9 artists perform live the songs that they're
10 seeking air play on the radio.
11 Q All right. So when you say they
12 might invite you, that's the reference to
13 concert tickets down there?
14 A That's correct.
15 Q Is there another reason why record
16 companies sometime provide concert tickets to
17 Sirius?
18 A Yeah, there is. Sometimes the
19 labels will supply us with concert tickets to
20 give away on the air to our listeners as a way
21 to further engage them in that artist's music.
22 Q All right. Do artists ever appear

1 live on Sirius?
2 A Yeah, rather often.
3 Q Okay. Do the record labels play
4 any role in that?
5 A Typically, they do. You know,
6 like I said earlier, you know, the record
7 labels will sometimes invite the programmers
8 out to see these bands perform live. Other
9 times they'll ask the programmer, "Hey, would
10 you be interested in having this artist come
11 up to your studies and perform live for the
12 listeners of your channel and you know, they
13 typically view that as another way to draw
14 attention to their artists on Sirius besides
15 just playing the recorded music.
16 Q From your dealings with the record
17 company representatives and the reports you
18 get now from the people underneath you, do you
19 have any understanding as to why the record
20 companies are approaching Sirius in the ways
21 that they do?
22 A Yes, I do. Having, you know,

1 spent over 20 years in radio, it's become
2 almost conventional wisdom in radio and the
3 record industry that the most effective way to
4 sell recorded music to consumers is through
5 receiving air play on the radio.
6 Q Okay, and do you have any
7 understanding as to why -- strike that.
8 Okay. Have you received any
9 feedback through the contacts with artists or
10 the record industry as to whether the air play
11 by Sirius is effective in its -- in promoting
12 record sales?
13 A Yes, I have and that feedback,
14 particularly I think over the last six to 12
15 months has increased pretty significantly but
16 on a fairly regular basis now, we'll receive -
17 - we'll have either verbal communication with
18 record promotion people who are thanking us
19 for their air play or they'll sometimes e-mail
20 us with a thank you and "Without your help it
21 wouldn't have been possible for this band to
22 have had the success they've had to date".

1 And at times, the programmers will
2 even receive gold and platinum records for the
3 artists that they were supportive of and as a
4 result of the air play and the effect we had,
5 the record companies would sometimes reward
6 the individual programmers of those channels
7 with, you know, gold and platinum records.
8 Q Okay, those are those plaques that
9 I see all around your office when I'm
10 visiting, right?
11 A Yes.
12 Q All right.
13 A My office and pretty much the
14 offices of all the programmers now at Sirius.
15 Q Right. Can you think of any
16 specific examples of where air play on Sirius
17 has had a promotional benefit to an artist?
18 A Yeah, there are a number of
19 examples.
20 Q Give us one, if you will.
21 A One particular example is the band
22 Evans Blue, which is one that we actually

1 started playing at Sirius before they had been
2 signed to a major record label and we were
3 told by the major label that one of the major
4 reasons that they signed that band is because
5 the band had already proven itself on the
6 radio on Sirius and they felt that, you know,
7 there was less risk in signing this band
8 because they had already been proven to be
9 successful for Sirius on its channels.
10 Q In the music industry we sometimes
11 hear reference to charts or to Top 40 which I
12 think is a reference to a chart. What are
13 those charts?
14 A Those charts are a reflection of
15 what a particular trade paper, in this case
16 it's probably Radio and Records/Billboard or
17 the Mediabase Monitoring Service. Those
18 charts that are compiled by those companies
19 are a reflection of what the most influential
20 radio stations in America are doing in a
21 particular format and the chart reflects the
22 success of a particular song within that

1 format.
2 Q Okay. Now, you said it reflects
3 what's happening on the most influential radio
4 stations in America, I believe you said. So
5 not every radio station is included in the
6 data on the chart.
7 A No, not every radio station is
8 included. The charts only represent what the
9 -- typically the editors at these trade
10 publications believe to be the most
11 influential stations in America.
12 Q Is air play on Sirius included in
13 those charts now?
14 A Air play on Sirius is included on
15 those charts and it has been now for I think
16 approximately a year and I should add to that,
17 that those decisions by the editors of these
18 trade publications are very much influenced by
19 the record companies and their desire to want
20 to see air play on particular channels. And
21 I do know that the decision by the trade
22 publications to include Sirius' air play in

1 their charts was driven, from what I was told
2 by the trade papers, primarily by the record
3 companies.
4 Q Okay. And how does chart position
5 translate to the objectives of the promotional
6 units in the various record companies? Are
7 the promotional units and the record companies
8 concerned about chart position?
9 A Absolutely. In fact, you know,
10 having spent, you know, much of my career
11 working with these promotion executives at the
12 major labels, their -- A, their performance in
13 most cases is judged more on air play than it
14 is for record sales in the promotion
15 departments, but also at least the major label
16 executives and promotion who I've come into
17 contact in my 20 years and all my colleagues
18 would say the same thing, the record
19 companies' promotion people acknowledge that
20 radio air play translates into more record
21 sales.
22 Q Now, do the record labels use play

1 on Sirius for any purpose other than building
2 up their chart position and reviewing the
3 success of their promotional crews? What
4 other uses do record labels make of air play
5 on Sirius?
6 A I'm not sure, can you repeat that?
7 Q Yeah, you attached several
8 industry ads to your direct testimony as one
9 of the exhibits. What were we showing through
10 those industry ads?
11 A Right, well, you know, over the
12 years now, Sirius has built up a reputation as
13 being an outlet that has an ability to break
14 new music. I've also recruited a number of
15 fairly successful programmers in their
16 particular genres of music and as a result
17 now, Sirius playing a new song from an artist,
18 labels will often buy ads in trade
19 publications and in those ads they will list
20 some of the radio stations that have recently
21 added music from that particular artist, and
22 in many cases now they're including the name

1 of the channel on Sirius that is playing that
2 new piece of music as well as some of the
3 other terrestrial stations that might be
4 playing it as well.
5 Q Okay, and you attribute this --
6 the label's use of Sirius air play to Sirius'
7 reputation; is that right?
8 A Yeah.
9 Q Okay. Are there any other reasons
10 besides Sirius' reputation why the labels you
11 air play on Sirius is particular promotional?
12 A Well, the air play, you know, they
13 receive on Sirius, I think that is sometimes
14 used -- for instance, if we're playing a new
15 song by an artist and we're one of the earlier
16 stations on that record, that information, you
17 know, Sirius Hits 1, for instance is playing
18 this song 50, 60 times a week. That
19 information is they used by record promotion
20 people to inform other programmers around the
21 country that, "Hey, look Sirius Hits 1 has
22 jumped out. They're playing this thing 50 or

1 60 times a week. You might want to play it,
2 too".
3 Q Do the record -- in your
4 experience, do the record labels encourage the
5 on-air host to be sure to identify the artist
6 and song when they play a song? Is that a
7 source of friction sometimes between the
8 record labels and the hosts?
9 A Well, over the years, in
10 terrestrial radio, the record companies would
11 be particularly frustrated with terrestrial
12 radio and its inability to identify the music
13 that's being played. Sometimes it's been
14 referred to in the record and radio industries
15 as "back announcing". And it's something that
16 terrestrial radio just doesn't do a very good
17 job of. Because we're a digital service, back
18 announcing not only happens on Sirius but
19 because we're a digital service, we're able to
20 display the artist and title of any song
21 that's playing on the actual screen while it's
22 playing.

1 Q So I don't have to sit there and
2 hope the DJ mentions the artist again at the
3 end of the song.
4 A Sometimes they will but if you
5 didn't happen to catch it or you wanted to
6 know what that song was immediately, you don't
7 want to wait for the DJ to announce what that
8 song was, you can see it right on the screen
9 as you're hearing it.
10 Q Does Sirius have any --
11 JUDGE WISNIEWSKI: Did it ever
12 cause any auto accidents?
13 THE WITNESS: Not that I'm aware
14 of.
15 MR. KIRBY: That's the cell phone,
16 your Honor, our competitor is the cell phone.
17 BY MR. KIRBY:
18 Q Does Sirius have any competitive
19 advantages with respect to developing new
20 artists, baby artists?
21 A Well, because of the number of
22 channels that we offer at Sirius we're able to

1 A, devote certain music channels within a
2 particular genre, whether it be country or
3 rock, where those channels would play almost
4 all new music. So for instance, in the rock
5 genre, our Left of Center channel plays almost
6 entirely, you know, new alternative rock that
7 in most cases isn't heard you know, on
8 terrestrial radio at that stage.
9 Also because of the commercial-
10 free nature of our channels, we just
11 essentially have more time in a particular
12 hour to fill up. Terrestrial radio, as you
13 probably know, plays anywhere from, you know,
14 12 to in some cases 17, 18 minutes of
15 commercials an hour and we're able to take
16 that time and be able to play on stations that
17 play a lot of new music even more new music
18 than you might hear on terrestrial radio.
19 Q You mentioned the concept of being
20 commercial-free. Are all of the Sirius music
21 channels commercial free?
22 A Yes, they are.

Q And I think I skipped over this at the very beginning, I apologize. How many such commercial free music channels does Sirius have?

A Well, there are 64 that we produce here in the US.

Q All right, and are there others?

A There are five additional channels, bringing the total to 69 that are produced by our partners in Canada, Sirius Canada.

Q Okay, of that total, which ones are you responsible for?

A I'm responsible for the 64 channels that originate here in the US.

Q Now, when you say these channels are commercial free, what do you mean by commercial free?

A By commercial free, I mean, there is absolutely no commercials or any sponsorships or underwriting something, you know, you might hear on MPR Outlet sometimes,

that this hour of programming is underwritten by such and such. Sirius' music channels are clean. There's no commercials, no sponsorships, no underwriting.

Q All right, and you indicated that one result of that is you have more time available to devote to the music and the play list. Does the lack of commercials have any other benefit for Sirius programming?

A Yes, it does. I believe that not having jarring commercials come on every 15 or 20 minutes allows us to create a more immersive experience for our subscribers and further engages then in -- and garners even more interest in the artists that we're playing and the songs that we're playing and creates more passion and ultimately, I believe, you know, it results in more records being sold as a result of the air play on Sirius.

Q Does the fact that Sirius has 64 music channels under you and a few more from

Canada have any effect on Sirius' ability to reach music listeners with particular or narrow interests?

A Yes, it does. Sirius is able to take a genre of music and carve it up, you know, a number of different ways so for instance, in the -- I'll just use the rock genre as an example, there are rock channels on Sirius that are -- play much harder rock music and are more aggressive in sound, but we also have a second rock channel, in this case, I'm referring to Octane, which is the harder, more aggressive rock channel.

Then we have another rock channel which is a little bit softer in sound and not quite as aggressive called All Nation, which targets an audience that wants to hear a little, you know -- still wants to hear new music but in a much more mellower environment. And as a result of that, I think that we're able to better serve the particular audiences for those two channels and further engage them

in the kind of music that we're playing.

Q Does Sirius have classical programming?

A Yes, it does.

Q Okay, is that something that's generally available to most Americans over terrestrial radio?

A Not particularly. It is available. I think I mentioned in my testimony in, I guess it would be seven of the top 10 markets, but as you start to get out into the medium and more smaller and rural sized markets, it is often difficult to find a full time classical station. You might have a weekend program dedicated to classical music for you know, blocks on the weekends but that's a genre of music that once you get outside of the big markets, it's very difficult to find on the radio today.

Q And classical music, I guess is one of those terms. You have a classical music station. Do you also have an opera

1 music station?
2 A We actually have three classical
3 stations or three stations that we would
4 classify as classical. One of them is a
5 symphonic classical channel but there are also
6 two others. One is a pops channel with, you
7 know, stuff like from the Boston Pops and such
8 and then the third channel is an opera channel
9 which in the case of Sirius is a channel that
10 we co-produce with the Metropolitan Opera in
11 New York City and that channel consists
12 primarily of live recordings or live
13 performances directly from the Metropolitan
14 Opera in New York.
15 Q I grew up in Lake Charles,
16 Louisiana, which is over on the western border
17 next to Texas. What do you think the chances
18 are that when I got up on a Monday morning, I
19 could find a heavy classical or light
20 classical and a full time opera channel on
21 terrestrial radio?
22 A Slim to none.

1 Q On the other end of life --
2 JUDGE WISNIEWSKI: You could get
3 Houston stations, couldn't you?
4 MR. KIRBY: Sometimes, your Honor,
5 it is pretty flat, but if you were getting
6 Houston stations, how much -- I won't go
7 there.
8 BY MR. KIRBY:
9 Q But talking about the other end of
10 the spectrum, perhaps, Mr. Blatter, what about
11 Bluegrass, does Sirius have a Bluegrass
12 channel?
13 A Sirius does have a full time
14 Bluegrass channel. That's another, you know,
15 nitch style of music that really isn't
16 supported by terrestrial radio. There might
17 be, you know, a few Bluegrass stations located
18 around the country but for the most part,
19 that's a genre of music that just does not get
20 air play on radio.
21 Q All right.
22 CHIEF JUDGE SLEDGE: Are you

1 considering the small AM stations?
2 THE WITNESS: Well, I think there
3 are a few small stations, yes, I think there
4 are some of those, you know, in Kentucky and
5 wherever that play Bluegrass full time but
6 that's the extent of it.
7 CHIEF JUDGE SLEDGE: Probably not
8 full time but --
9 THE WITNESS: Not even full time.
10 CHIEF JUDGE SLEDGE: -- they
11 include a lot of Bluegrass with their country
12 music.
13 THE WITNESS: It's usually
14 relegated as a speciality show on a country
15 channel in the South.
16 BY MR. KIRBY:
17 Q And since country came up, how
18 many country channels does Sirius have?
19 A Sirius has about five country
20 channels.
21 Q All right, why? Isn't country,
22 country?

1 A No, country is not country. I
2 mean, country is a huge format. I think as
3 far as shear number of stations, it's actually
4 the most popular format at terrestrial radio,
5 although those terrestrial stations are all
6 essentially programmed the same. At Sirius we
7 not only have a new country channel which
8 would be a similar format to what you get on
9 terrestrial radio but we also have two kind of
10 gold-based is what we refer to in the
11 industry, country channels that are more era
12 based. You know, one of them plays country
13 music from the `80s and `90s and the other
14 gold-based channel plays classic country which
15 also is a format that you probably won't find,
16 you know, the old Whalon Jennings records on
17 the radio much on terrestrial radio any more
18 but we're able to serve that audience with a
19 classic country channel.
20 Q Why is Sirius able to maintain
21 five country channels when you don't find
22 anything like that in those terrestrial radio

1 markets?
2 A Well, having spent, you know, most
3 of my career in terrestrial radio, the goals
4 are a bit different at Sirius. At terrestrial
5 radio, the goal is to create a radio format
6 that will reach a number -- enough listeners
7 to make the station attractive to advertisers.
8 Without advertisers at terrestrial radio, you
9 don't have a business. At Sirius because our
10 music channels are commercial free, we're not
11 really concerned about what advertisers think
12 about our music channels, so we're able to
13 offer channels on Sirius that we know would
14 never -- would be very difficult to have a
15 successful business at terrestrial radio, for
16 instance with a Bluegrass channel or a reggae
17 channel or, you know, a classical jazz
18 channel, but on Sirius, like I said because we
19 don't have to meet the needs of advertisers,
20 we can offer a lot of styles of music in
21 different formats that would just never be
22 successful at terrestrial radio.

1 JUDGE ROBERTS: Mr. Blatter, are
2 there non-music channels offered by Sirius
3 that are commercial free?
4 THE WITNESS: Not that I'm aware
5 of.
6 BY MR. KIRBY:
7 Q Are you responsible for the non-
8 music channels, Mr. Blatter?
9 A No, I am not responsible for those
10 channels.
11 Q Okay.
12 A I should, to be correct, there is
13 one non-music channel that I do oversee called
14 Maxim Radio which is a station that we do with
15 the Maxim magazine. It's a talk station that
16 I am responsible for.
17 Q And does it have commercials?
18 A That does have commercials.
19 Q All right. Mr. Blatter, your
20 written direct talks a lot about the
21 programming process at Sirius and I'm not
22 going to go through all of that but one of the

1 terms you use there is stationality. What is
2 stationality as Sirius uses that term?
3 A Stationality is an industry term
4 that we use in the radio business to define
5 what we believe to be the overall personality
6 of that station. And when I say personality,
7 what I mean is the combination of the music
8 that that station plays but even more
9 importantly, the style of the on-air host and
10 how they communicate directly with their
11 audience. The interstitial pre-produced kind
12 of station ID's that we play in between the
13 songs, how they're written and produced, as
14 well as on the appropriate channels we may be
15 doing certain contests, the types of contests
16 we might do on a certain channel, so all of
17 that kind of wraps in -- wraps up into what we
18 refer to as the stationality for a particular
19 station.
20 Q Okay. Now, is music selection and
21 music sequencing part of what contributes to
22 stationality?

1 A It's one part of it. If the
2 station is a very aggressive hard rocking
3 channel or if it's very mellow soft rock type
4 channel, the way in which we would sequence
5 and schedule those songs would be different
6 and that ultimately, yes, does contribute to
7 the overall stationality.
8 Q Well, let's start first with music
9 selection and then we'll talk about music
10 sequencing. How does Sirius go about
11 selecting the music that's going to form the
12 library for a particular channel?
13 A Well, the first thing we do is
14 first define who it is we're trying to reach
15 with that particular channel. Once we define
16 that, sometimes, we'll, you know, we'll write
17 it up on paper, you know, very specifically as
18 to who it is we're trying to reach. But once
19 we do that, we would then look at the total
20 available body of music and then from that,
21 depending on the format but in most cases, we
22 would identify the most familiar, popular and

1 compatible songs within that body of music
2 that we think that audience might want to
3 hear.
4 Q And ultimately you put together
5 something called a play list; is that right?
6 A Ultimately, that body of music
7 actually is then hand-coded by the individual
8 programmers of a particular channel by
9 different characteristics such as era, the
10 gender of the person singing the song, the
11 texture of the song, and a number of other
12 characteristics that might be specific to a
13 particular genre of music.
14 Once each song is fully sound-
15 coded, is what we refer to it in the industry,
16 then those songs are put into our music data
17 base and we do use a system called music
18 master to help the programmers schedule the
19 music on a particular channel, and that system
20 really just -- you know, the programmer gives
21 it a certain set of rules to apply and the
22 computer system essentially just takes a first

1 swipe at sequencing the songs for a particular
2 day's worth of music but it is far from done.
3 In fact, it typically takes and average
4 programmer anywhere from you know, 45 minutes
5 to upwards of a couple of hours to hand-
6 massage the music before it actually is then
7 sent to the DJ's assuming it's not a channel
8 where the DJ's are picking their own music.
9 Q Okay, now I don't want to go into
10 great detail on this but what sort of factors
11 do you take into consideration in sequencing
12 the music?
13 A Well, when it comes to sequencing,
14 I'll just use the country format as an example
15 in this case, but in the country format there
16 are a lot of artists that tend to have slow
17 songs, you know, ballads which often do very,
18 very well, but I know from experience as a
19 country programmer, that you want to make sure
20 that if you're going to play a lot of ballads,
21 that those ballads don't play back to back and
22 there's a nice flow of music.

1 So when we sequence it, we're
2 controlling for the flow, whether it be on
3 tempo or if there are country artists, for
4 instance, that have had big successes, pop
5 artists as well, you might not want to play
6 those two kind of artists back to back because
7 the country artist is sometimes -- the country
8 listener is sometimes sensitive to hearing,
9 you know, a Shania Twain type artist or Rascal
10 Flats who now are big pop artists as well,
11 they don't like -- the country artists tell us
12 they don't like when those artists come up too
13 much together. So we'll in the hand massaging
14 process a lot separate those artists better to
15 make the station more appealing.
16 Q But why do you need all the fru-
17 fru? Isn't a record song pretty much a
18 recorded song? Why can't you just play it?
19 A Well, you can't just play it. A
20 recorded song is not just a recorded song.
21 It's important that our programmers stay very
22 close in touch with what their audiences want

1 and I found over the years as a terrestrial
2 programmer, that when you go through and
3 diligently code the songs as we do at Sirius
4 and you go in and hand massage the music as we
5 do at Sirius that you're able to provide a
6 much more satisfactory listening experience
7 for the intended audience of that channel.
8 Q Now, the last topic I would like
9 to explore with you briefly, your direct
10 testimony mentions that Sirius maintains some
11 artists' channels; is that correct?
12 A Yes, it does.
13 Q What are the artists' channels?
14 A Can I turn to that page in the
15 testimony? Is that okay?
16 Q Yes, you can, except I don't know
17 which one it is but let me see if I can find
18 it for you.
19 A I can't figure it out off the top
20 of my head.
21 Q I wrote down paragraph 18. I
22 wonder if that's where we have it.

1 A I think it's on page 8 at the
2 bottom.
3 Q Okay, yes, it is, paragraph 18,
4 page 8 at the bottom. Looking at that
5 paragraph where you talk about having
6 developed channels and programs in conjunction
7 with well-known artists, describe what Sirius
8 is doing there.
9 A Well, what we've done and I'll use
10 the most recent case of the Grateful Dead
11 channel, because we did just announce that
12 channel and it will be airing later this
13 summer as I mentioned, but the Grateful Dead
14 is collaborating with Sirius to create their
15 own Grateful Dead brand of channel as a way to
16 promote the band's music and kind of keep
17 their music alive on the radio, whether it be
18 their recorded music or live recordings that
19 the band has accumulated over the years.
20 On the Sirius side, we believe the
21 artists' channels are important to us because
22 they -- the artists' channels provide us with

1 more exclusive content that you're not going
2 to get anywhere else. So there's no other
3 place on the radio that you can hear an all
4 Elvis channel other than on Sirius radio,
5 called Elvis Radio. The same would go for a
6 channel that we co-produce with Eminem called
7 Shade 45 and Jimmy Buffet is another example
8 of an artist that co-produces a channel with
9 us called Radio Margaritaville.
10 Q And this also is done, for example
11 with the Metropolitan Opera?
12 A Yes, it is. We have partnered
13 with the Metropolitan Opera and have created
14 an opera channel that when the Metropolitan
15 Opera is live in New York, we broadcast those
16 performances live on Sirius and when the opera
17 is not live, we're typically playing live
18 performances that were recorded at the
19 Metropolitan Opera, dating back, you know, to
20 50 -- dating back to up through 50 or 60 years
21 ago.
22 Q Okay, so does the fact that the

1 Rolling Stones and the Who channel went away,
2 mean that Sirius is giving up on this concept
3 of artists' channels?
4 A No, absolutely not. I mean, the
5 Who channel and the Rolling Stones channel
6 were always intended to be limited run
7 channels and we've been told by both artists
8 that when they have something else to promote,
9 whether it's another tour or a new album
10 coming out, that they'd love to do it again.
11 MR. KIRBY: Your Honor, I don't
12 recall exactly when we typically take the
13 morning break. I'm very nearly through but if
14 we were to take a break now, perhaps, I could
15 let Mr. Joseph remind me of all the subjects
16 I've overlooked and then we could continue.
17 CHIEF JUDGE SLEDGE: All right.
18 We'll recess for 10 minutes.
19 MR. KIRBY: Thank you, your Honor.
20 (A brief recess was taken at 11:02
21 a.m.)
22 CHIEF JUDGE SLEDGE: We'll come to

1 order.
2 Mr. Kirby?
3 BY MR. KIRBY:
4 Q Just one more short subject. Mr.
5 Blatter, during the previous witness'
6 testimony, the question was asked if Sirius is
7 adding all this exciting new non-music
8 content, how come your channels get all the
9 great numbers down at the bottom of the dial?
10 Do you have any understanding of
11 why that's so?
12 A Well, first off, I was not with
13 the company when the decision was made to put
14 the music channels where they are today
15 starting at channel 1 and going up.
16 But I can say that first off, it
17 does make sense when you have some decades
18 type channels like 60s, 70s and 80s to put
19 them on channels 6, 7, and 8. But with that
20 said, I have been part of some discussions
21 that have come up as to where we might place
22 certain non-music channels on the dial and it

1 just seemed to make the most sense that if we
2 were going to add a new channel, that was non-
3 music, that we shouldn't disrupt the order and
4 sequencing of all the music channels to put a
5 non-music channel within that tier.
6 Q The believe is that subscribers
7 aren't interesting in relearning the line-up?
8 A Yes, and the subscribers become,
9 you know, they create certain habits and they
10 start to know certain channel members, so if
11 we were to start putting non-music channels in
12 the music section, that would cause a rather
13 large disruption and would potentially have a
14 pretty material effect on the satisfaction of
15 our service.
16 JUDGE WISNIEWSKI: Would you talk
17 to our local cable TV about that?
18 (Laughter.)
19 THE WITNESS: I can try.
20 MR. KIRBY: Your Honor, that
21 concludes my direct examination.
22 CHIEF JUDGE SLEDGE: One follow-up

1 to what you just said. You've got 69 channels
2 and is your bandwidth completely -- well, you
3 said you had to pre-empt for sports
4 programming, you haven't said, but the
5 testimony is you have to pre-empt for extra
6 sports programs. So all your bandwidth is
7 used up.
8 THE WITNESS: I'm not responsible
9 for the actual bandwidth allocations. So to
10 the best of my knowledge, we're pretty close
11 to maximizing --
12 CHIEF JUDGE SLEDGE: Let me just
13 get to my question. You're not able to use
14 the other 30 channels that haven't been used?
15 THE WITNESS: Not right now, no.
16 CHIEF JUDGE SLEDGE: Okay, thank
17 you.
18 (Pause.)
19 CHIEF JUDGE SLEDGE: While I've
20 interrupted, a little test. Are you familiar
21 with the song Daniel's Parade?
22 THE WITNESS: I am not.

1 CHIEF JUDGE SLEDGE: It's an old
2 country song. Waylon Jennings. Wondered
3 where that would be in your five channels.
4 THE WITNESS: That would be in our
5 classic country channel.
6 CHIEF JUDGE SLEDGE: Any questions
7 by XM?
8 MR. RICH: No questions.
9 CHIEF JUDGE SLEDGE: Music Choice.
10 MR. FAKLER: No, Your Honor.
11 CHIEF JUDGE SLEDGE: Cross by
12 SoundExchange?
13 MR. HANDZO: Thank you, Your
14 Honor.
15 CROSS EXAMINATION
16 BY MR. HANDZO:
17 Q Good morning, Mr. Blatter.
18 A Good morning.
19 Q We haven't met before, but my name
20 is Dave Handzo and I represent SoundExchange.
21 Now Mr. Blatter, I'm going to
22 start by asking you to turn to paragraph five

1 of your written testimony which we put in the
2 record as Sirius Exhibit 36. And at the end
3 of that paragraph you say that you supervise
4 and work with extensive listener research that
5 you conduct to evaluate new formats and
6 identify the most attractive music for those
7 formats.
8 Do you see that?
9 A Yes, I do.
10 Q Who conducts that survey research
11 or listener research?
12 A Well, there are many different
13 types of listener research that we conduct and
14 there are a number of companies that we use
15 third parties to conduct that research for us.
16 Q Does that research typically
17 result in written reports to you?
18 A Sometimes it does, but not always.
19 It would depend on the nature of the study
20 itself.
21 Q Are those studies, do those
22 studies include formal listener surveys?

1 A Yes, they do.
2 Q Is that survey work done under
3 your supervision?
4 A It would depend on the listener
5 survey itself. There are certain surveys that
6 yes, I do oversee the administration of those
7 surveys. There are others that collectively
8 among myself and the other heads of
9 programming of Sirius, along with the research
10 department would be responsible for those
11 studies.
12 Q And what's sort of topics do those
13 studies explore?
14 A Which studies are you referring
15 to?
16 Q Well, let's start with the ones
17 that are done under your direction?
18 A Well, the ones that are under my
19 direction are typically researching the
20 audience for a particular channel on Sirius,
21 for instance, we'll just stick with the
22 country audience as an example. So we would

1 find a representative sample of a particular
2 country channel. Let's say our new country
3 channel and we would do one of two things.
4 One is we would research the entire potential
5 body of music that we might play on that
6 particular channel with that representative
7 sample, or we might take a much more narrower
8 view of things and just research the newer
9 songs played on that channel which is
10 something we actually do now on a weekly basis
11 for any of our new music-oriented channels.
12 Q Is there any other subject that
13 you research in the research done under your
14 direction?
15 A Solely under my direction, those
16 are the only types of studies that come to
17 mind right now.
18 Q I take there is research one under
19 the direction of others that you receive in
20 the ordinary course of business?
21 A There are other surveys which I
22 have seen, yes.

1 Q And I take it those surveys might
2 address things like customer satisfaction and
3 how customers respond to the various offerings
4 of Sirius?
5 A Some of those surveys have
6 attempted to measure customer satisfaction and
7 the value of certain other types of content
8 that we offer.
9 Q Okay. Now you did not attach to
10 your written statement any of that survey
11 research, did you?
12 A I don't believe I did.
13 Q And you don't cite to any of that
14 survey research in support of the opinions
15 that you offer in your written testimony, do
16 you?
17 A I don't think directly I did, but
18 I think I did say in my written testimony that
19 we do use that research and it's just one of
20 many tools that we use to guide our instincts
21 as programmers.
22 Q Okay, but in your written

1 testimony, you don't point to any particular
2 research that supports the opinions that you
3 offer, do you?
4 A I'd have to read through the
5 entire thing to give you a total positive
6 answer, but I don't think I cited any specific
7 studies in this testimony.
8 Q Now Mr. Blatter, you don't track
9 how many CDs or downloads are sold as a result
10 of airplayon Sirius, do you?
11 A I don't. I don't regularly track
12 that, no.
13 Q Are you able to say how many CDs
14 or downloads are sold as a result of airplayon
15 Sirius?
16 A It would be difficult for me to
17 give you specific numbers. But having spent
18 my entire career in radio as well as what my
19 colleagues tell me at Sirius and even the
20 conversations I have with the record community
21 on a regular basis, it is my opinion that
22 radio airplayon Sirius does result in more

1 record sales for the artists that we play.
2 Q But you can't quantify how much,
3 can you?
4 A It's difficult for me to quantify
5 how much and I think it would be for most
6 radio programmers in America to quantify
7 exactly how much music they're selling as a
8 result of the airplay on that channel.
9 I think it's important to mention
10 that as a radio programmer, I'm judged by the
11 satisfaction and to a certain extent the
12 listenership on our channels. My performance
13 isn't necessarily judged by how many records
14 we're selling. It's something that we'll keep
15 an eye out for, but it's not something that we
16 would closely follow in the normal course of
17 business as a radio programmer.
18 Q Okay, so because you're judged by
19 consumer satisfaction with the channels that
20 you're responsible for, you're not going out
21 and trying to figure out how many CDs or how
22 many downloads are sold as a result of

1 programming on Sirius, are you?
2 A Not necessarily trying to figure
3 it out, but we do have very close
4 relationships with the record company
5 promotion executives and work very closely
6 with them to help them rate new artists and
7 further established, more familiar artists
8 that maybe have a track record already, but
9 they're looking to take their career to the
10 next level.
11 We spend an inordinate amount of
12 our time actually working with those promotion
13 executives to see how we can work, collaborate
14 together to help further the careers of these
15 artists.
16 Q But you can't translate any of
17 that into numbers, can you?
18 A I don't actively track SoundScan
19 data to measure how many records are being
20 sold as a result of airplay on Sirius.
21 Q So the answer to my question is
22 no?

1 A Well, it would be difficult for me
2 to say no, only because when I talk to record
3 executives, you know, they regularly thank us
4 for the airplay on Sirius and I received an
5 email just a week or so ago saying look,
6 without your support, this band wouldn't have
7 had the success that it had. So and they are
8 ultimately measure success by the record,
9 number of records that they're selling.
10 So if a high-level executive is
11 thanking me for the airplay on Sirius because
12 they're selling more records, then I'd have to
13 believe that our airplay is contributing to
14 the success of that band.
15 Q I may not have been clear in my
16 question, Mr. Blatter.
17 My question is you can't translate
18 any of that into dollars and sales or numbers
19 of CDs sold, can you?
20 (Pause.)
21 A I think that's a very difficult
22 thing for me to quantify right now.

1 Q Mr. Blatter, you haven't seen any
2 survey research which supports your view that
3 consumers who get Sirius spend more money on
4 CDs or downloads, have you?
5 A There might have been some
6 research surveys in the past that have touched
7 on this area, but I don't really recall the
8 specifics of it.
9 Q So there's nothing as you sit here
10 today that you can point us to as a survey
11 that supports your opinion that airplay on
12 Sirius generates record sales?
13 A I can only say that in 20 years in
14 radio I've never come across a radio
15 programmer in my 20 years or for that matter
16 a radio promotion or even a record executive
17 that doesn't believe that radio airplay
18 translates into record sales.
19 Q And again, let me just be clear
20 with my question. You haven't seen a survey
21 which supports that, have you?
22 A I have seen surveys that support

1 that radio airplay is a driver and is the
2 primary and number one driver of record sales.
3 Q Can you tell us what survey you've
4 seen?
5 A One survey that I recall offhand
6 and I have seen a number over the years, but
7 one survey I recall offhand is a survey that
8 was conducted by Edison Research several years
9 ago that asked that question.
10 Q That survey doesn't address
11 whether airplay or whether Sirius might also
12 have the result of causing people to buy fewer
13 CDs or fewer downloads, right?
14 A Well, I believe that survey was
15 conducted prior to Sirius being commercially
16 available, so it wouldn't be a fair question
17 to ask if it weren't available.
18 Q So the survey that you're
19 referring to doesn't address Sirius at all, is
20 that right?
21 A It asked people, you know, what
22 influenced them most and the number one

1 influencer of record sales was radio airplay.
2 Q That's terrestrial radio airplay?
3 A I don't think it was defined as
4 one or the other, it was just defined as radio
5 airplay.
6 Q But you're saying the survey was
7 done before Sirius was commercially available?
8 A It might have been just becoming
9 available at that time.
10 Q And the survey did not explore
11 whether satellite radio caused an off-setting
12 effect of causing people to buy fewer CDs or
13 downloads, correct?
14 A I'm sorry, can you restate that?
15 Q Sure. The survey that you are
16 referring to didn't address whether
17 subscribing to satellite radio would cause
18 people to buy fewer CDs or downloads, isn't
19 that right?
20 A Well, considering we weren't
21 really commercially available at that time, I
22 don't think that they'd really have any reason

1 to research that at the time.
2 Q So the survey that you're talking
3 about would have been addressing the affected
4 terrestrial radio airplay, is that right?
5 A No, it wasn't specific to any type
6 of radio airplay that I'm aware of. But it
7 just --
8 Q That's all there was at the time,
9 it sounds like, right?
10 A I couldn't speak with certainty on
11 that. I'm not sure of the exact dates of the
12 survey.
13 Q And to the best of your
14 recollection, all the survey did was ask
15 people where they heard the music they just
16 bought?
17 A I'm not sure of the precise
18 question itself, but I know that it was
19 looking to demonstrate what has the most
20 influence on the buying decision.
21 Q Okay, so the survey that you've
22 referred me to, you're not sure whether it was

1 done when Sirius was even in existence and
2 you're not sure what the question was that
3 they asked, right?
4 A I didn't say I wasn't -- I said
5 that the question that was asked, I don't
6 remember specifically how it was worded, but
7 I do know what they were intending to do was
8 to demonstrate the influence that radio
9 airplay has on record sales.
10 Q Mr. Blatter, let me ask you to
11 look at paragraph 38 of your written
12 testimony.
13 (Pause.)
14 And the first sentence there you
15 list six channels, do you see that?
16 A Yes, I do.
17 Q Can you tell me what kind of music
18 those channels play?
19 A Sure.
20 MR. KIRBY: Excuse me. This is
21 the one sentence in the whole thing.
22 MR. HANDZO: I specifically tried

to ask the question in a vague enough manner that it didn't call for any restricted information.

MR. KIRBY: Your Honor, I think when you start describing certainly with any detail the kind of music that particular channels on Sirius play, it tends pretty quickly to identify what channel.

CHIEF JUDGE SLEDGE: Objection overruled.

BY MR. HANDZO:

Q Mr. Blatter, can you describe to me what kinds of music these channels play?

A They play rock music.

Q Have these channels typically played more recent rock music?

A Generally speaking, yes.

Q So these are not classic rock channels, right?

A Well, one of them might play class rock.

Q Might? You're not sure?

A I'm just a little uncomfortable getting into the specifics of these channels because I'm trying to protect the integrity of my own programmers.

In fact, I'm not really comfortable really -- I already mentioned it, but I'm not comfortable even giving the genre.

MR. KIRBY: Your Honor, if we could enforce the protective order at this point and ask people that aren't entitled to hear confidential information to leave.

CHIEF JUDGE SLEDGE: Motion is denied.

BY MR. HANDZO:

Q Mr. Blatter, these are channels that play a lot of new releases, right?

A Can you define "a lot" for me?

Q General play 50 percent of new releases?

A Roughly, yes.

Q Maybe a little more. Some of the channels play more than 50 percent new

releases?

A Yes. I think that would also define how you're defining a new release.

Q Generally, Mr. Blatter, what the record companies are trying to promote is new releases, correct?

A ON these particular channels, they are typically looking to promote newer releases.

Q But generally, new releases are what the record companies try and promote, right?

A Generally, but not in all cases.

Q Well, and in fact, in paragraph 32 of your written testimony, Mr. Blatter, you say record companies typically focus their promotional efforts on new music rather than existing catalog, do you see that?

A Yes, typically. I say generally.

Q And so the channels that you chose to survey here are the kinds of channels that are playing new releases which is what the

record companies would most want to promote, right?

A Yes.

Q Are you the person who chose these six channels to survey for the purposes of your testimony in paragraph 38?

A I believe I was, yes.

Q Mr. Blatter, turning to paragraph 31 of your testimony, you say that most consumers typically do not decide to purchase music based on a story in a newspaper or magazine, do you see that?

A Yes.

Q Isn't it true, Mr. Blatter, that there are lots of ways for consumers to sample music and learn about music?

A How are you defining "lots"?

Q Let's go through some. People can go to a store, a * (11:34:51) and sample the music there, right?

A Yes, they could.

Q People learn about music from

1 music on internet radio, right?
2 A I've heard about that, but I
3 actually haven't come into contact with too
4 many people that have learned about new music
5 through internet radio.
6 Q You're familiar with internet
7 radio, aren't you?
8 A I'm familiar with music that's
9 delivered over the internet. I'm not so sure
10 I would actually categorize is as radio.
11 Q Well, there are various types of
12 music services that operate over the internet,
13 right?
14 A Yes.
15 Q And that's another way for
16 consumers to find out about new music, right?
17 A Potentially, sure.
18 Q There are music services that
19 stream music over cell phones, right?
20 A There are some services that I've
21 become aware of. I have never come across
22 anyone that pays for that, but yes.

1 Q That's another way for consumers
2 to find out about new music?
3 A I'm not familiar enough with most
4 of the offerings that are out there to know
5 how much new music they're playing, so I can't
6 really comment on that.
7 Q There are internet circle networks
8 like MySpace that people use to discover new
9 music, right?
10 A People could come across a new
11 band on MySpace, yes.
12 Q People learn about new music from
13 their friends, true?
14 A They could.
15 Q People learn about new music by
16 going to concerts, right?
17 A Not typically, but you could in
18 certain cases.
19 Q People learn about new music from
20 television, right?
21 A At times that could happen, yes.
22 Q So there are at least all of these

1 other ways for people to discover music beyond
2 listening to Sirius satellite radio, correct?
3 A There are other ways to discover
4 new music, but what I've learned in my 20
5 years in programming and radio, the number one
6 driver by far of people not only learning
7 about music, but then actually going out and
8 buy the records is through radio airplay.
9 CHIEF JUDGE SLEDGE: Mr. Handzo,
10 was your question about television directed to
11 video transmissions or audio transmissions?
12 MR. HANDZO: Fair question, Your
13 Honor. Let me go back over that.
14 BY MR. HANDZO:
15 Q You actually could learn about new
16 music through audio transmissions over
17 television, right? There are services that
18 provide music over the television?
19 A Yes.
20 Q But you could also learn about it
21 through video transmissions like some time
22 ago, maybe still, MTV?

1 A It MTV happens to be playing music
2 video which they don't do much of these days,
3 you might learn about something new.
4 Q There are other channels that play
5 music videos?
6 CHIEF JUDGE SLEDGE: That's why I
7 asked the question. I can't think of any.
8 THE WITNESS: There is one other
9 one that I'm aware of called Hughes, but it
10 reaches a very, very small --
11 BY MR. HANDZO:
12 Q Mr. Blatter, you are --
13 CHIEF JUDGE SLEDGE: The Dinah
14 Shore Show is gone.
15 (Laughter.)
16 MR. HANDZO: So is Ed Sullivan, I
17 believe.
18 CHIEF JUDGE SLEDGE: But
19 apparently not forgotten.
20 BY MR. HANDZO:
21 Q Well, Mr. Blatter, your background
22 is in programming, not in marketing or selling

1 music, right?
2 A My background is in programming,
3 but I am responsible for how each of our
4 channels or any channel I've been responsible
5 before is marketed on air.
6 Q But in terms of marketing and
7 selling music, selling CDs, selling downloads,
8 that's certainly not been something that
9 you've ever done, right?
10 A No, I haven't been involved in the
11 commercial aspects of selling music in my
12 career.
13 Q Mr. Blatter, turning to paragraph
14 32 of your testimony --
15 A Can I just go back for one second
16 actually to add something to my response?
17 Q I'm tempted to say no, but I'm
18 sure your counsel would bring it out on
19 redirect anyway. So go ahead.
20 A Yes, I mean there was an instance
21 I want to say about a year and a half or so
22 ago where we were approached by one of the

1 major record companies to -- where they were
2 going to create a CD which was actually more
3 for promotional value but we did get involved
4 with the record company in selecting songs to
5 put on the CD that were all, I think on
6 Universal artists and that CD was packaged as
7 an Outlaw Country which is the channel on
8 Sirius CD which then was included for sale in
9 a magazine. I think it was called Paste.
10 And the label was looking to work
11 with us because they knew the association and
12 the promotional benefit they would receive on
13 Sirius would be a benefit to those artists.
14 Q So that's your one experience with
15 selling CDs?
16 A There might have been others in my
17 career. That's one that comes to mind right
18 now. But there have been times where radio
19 stations have collaborated with the record
20 labels to actually sell recorded music.
21 Q Let me take you to paragraph 32 of
22 your written testimony, Mr. Blatter. And that

1 paragraph, as I understand it, addresses why
2 in your view terrestrial radio, I'm sorry, why
3 Sirius would have advantages over terrestrial
4 radio with respect to promotion, is that
5 right?
6 A Yes, it is.
7 Q Okay, now most of what you say
8 there with respect to satellite radio would
9 also be true with respect to internet radio or
10 internet music services, right?
11 A Not all internet radio services,
12 no.
13 Q Well, let's take a look, for
14 example, of the first bullet point, where you
15 say that Sirius displaced the name of the
16 artist and song continuously?
17 A Yes.
18 Q Internet radio services do that as
19 well, do they not?
20 A Not all internet radio services.
21 I know by law I think they'[re supposed to,
22 but I've come across a number of internet

1 radio services over the years that do not
2 display artist and title.
3 Q In fact, the ones that abide by
4 the law and do what they're supposed to,
5 display artist and song and album, right?
6 A I'm not sure if they display
7 album.
8 Q You don't know?
9 A I don't think they do, actually.
10 There might be some that do. The ones that
11 I've had experience with, I don't recall
12 seeing album there.
13 Q But you know that internet radio
14 stations are required to display the same
15 information you're talking about here?
16 A Yes.
17 CHIEF JUDGE SLEDGE: Why did you
18 say they're required?
19 MR. HANDZO: Your Honor, I believe
20 the performance complement does require the
21 display of that information.
22 CHIEF JUDGE SLEDGE: Did your

1 question assume services that are transmitting
2 under the license?
3 MR. HANDZO: Yes, I'm sorry.
4 CHIEF JUDGE SLEDGE: Statutory
5 license?
6 MR. HANDZO: Yes.
7 CHIEF JUDGE SLEDGE: That's a big
8 assumption, other than what your question
9 included.
10 BY MR. HANDZO:
11 Q Let me put it to you this way, Mr.
12 Blatter, you are aware that there are internet
13 radio stations for internet music services
14 that do display artists and song, right?
15 A I'm aware of them. I can't speak
16 to how many people are actually listening to
17 that, but I'm aware that there are services
18 out there.
19 Q And with respect to your second
20 bullet point, you say that Sirius offers 64
21 music channels, do you see that?
22 A Yes.

1 Q There are internet radio services
2 that offer far more music channels than 64,
3 right?
4 A There might be. I don't really
5 follow closely what's going on internet radio
6 space because I don't think that any one
7 internet radio service has reached a critical
8 mass, per se, that it's something that we
9 would watch that closely from a competitive
10 standpoint.
11 Q In your fifth bullet point, you
12 talk about having different and distinct
13 channels that allow you to go deeper into the
14 music catalog. The same is true of internet
15 radio services, correct?
16 A Like I said, I really don't follow
17 internet radio all that closely because they -
18 - I wouldn't actually, you know -- my primary
19 competitor is terrestrial radio today, so
20 while I watch what's happening on internet
21 radio passively, my primary focus is learning
22 what's happening on terrestrial radio more so

1 than anything else that is out there.
2 Q Okay so you can't speak, for
3 example, to the care and resources that
4 internet radio services devote programming or
5 how deep into play lists they go?
6 A Well, it has been my experience
7 and it is why I hesitate to call these radio
8 stations on the internet, internet radio
9 because it's in my professional opinion that
10 those services that are available are not
11 really radio stations. They're nothing more
12 than on-line jukeboxes where there is not much
13 care given and thought given to the actual
14 selection and sequencing of the songs.
15 Q But I think you just said that you
16 don't pay that much attention to them?
17 A Well, that's one of the reasons
18 that I don't. Not only do I not feel that
19 they are reaching enough audience, but when I
20 have listened, it's just not a -- I don't
21 believe it is even a close to competitive
22 product to what we offer on Sirius.

1 Q Now are you aware that there are
2 internet radio stations that allow the
3 consumer to click on a buy button and
4 immediately buy the music that they are
5 hearing?
6 A I think I've seen that when
7 listening to internet radio, certain internet
8 radio outlets before.
9 Q That is a benefit that Sirius does
10 not offer to record companies, correct?
11 A I don't think it is a benefit that
12 we offer today. No.
13 Q And are you aware that there are
14 internet radio services that allow listeners
15 to actually rate the song that they are
16 hearing at the time of their hearing it?
17 A Yes, and I've explored that rather
18 extensively myself and don't see much value in
19 that kind of information.
20 Q Are you aware that there are
21 record companies that do value that
22 information?

A I'm not. I've never in my conversations with record company promotion executives have had them cite to me research data provided to them by some internet radio outlet that gives the consumer the ability to rate a song on a certain scale.

Q In any event, that sort of rating data is not something that Sirius can supply, correct?

A I don't think that it is something that we can supply today. I will say that we are asked by, and this is typically how it happens in the terrestrial radio world and in the world of Sirius satellite radio is the radio promotion executives that call upon Sirius. They are always very interested to know how a certain song might be performing. And the kind of research that I have described earlier where we will measure the appeal of certain newer songs, what the intended audience of that channel. And that is information that the record companies, if we

disclose it to them. And a lot of times we choose not to for confidentiality purposes, but if we disclose it to them, they are usually quick to share that with other radio outlets as a way to influence them to get them to play this new artist as well. That information I hear shared and talked about a lot by the record companies. I've never once heard them talk about any sort of rating on an internet radio outlet.

Q Now Mr. Blatter, the last bullet point, going over to the next page, talks about who values Sirius broadcasts enough to pay for them. It's true, of course, that consumers don't pay out of pocket for FM radio, correct?

A No, they don't. FM radio is free.

Q And in many cases people don't, excuse, pay money out of pocket for internet radio services, right?

A Again, I really can't speak to internet radio. I know that there are many

pay internet radio services. I'm sure there are many free ones, too, but I don't think you can make a blanket statement about that segment as a whole.

Q Isn't it entirely logical to expect that having paid $12.95 a month out of pocket to subscribe to Sirius, a consumer may have already spent some or all of their budget on music for the month?

A I don't think so. I mean, if you break down the $12.95 to, you know, 50 cents a day, I don't think the cost of a local newspaper is going to really have that much of an impact on somebody's ability to buy more music.

Q Are you suggesting that you think Sirius could raise its subscription price and have no effect on the number of subscribers?

A I didn't state that.

Q Well, in fact, there is some price sensitivity by consumers with respect to how much they're willing to spend on music,

correct?

A Can you restate that?

Q Sure. How much consumers have available to spend on music is going to be -- well, actually, let me state it a different way. Isn't it reasonable to expect that if consumers have already spent $12, $13 in a month on music, on music through Sirius or XM, that's that much less they're going to be willing to spend on buying CDs or downloads?

A No, I don't believe it is and I think it's important to note that many of our subscribers, I don't have the specific numbers, choose to not pay for the service on a monthly basis. They're paying either on an annual basis or on a quarterly basis. So I don't think they're looking at it in terms of the $12.95 or as I put it earlier, the 50 cents a day.

Q But whether they're paying monthly, semi-annually, annually, that's that much money out of their pockets that they view

as not being available for other music purposes, right?

A I've never heard that concern voiced by any of our existing subscribers that I've come into contact with and that's never been a concern that's been expressed to me by anybody I've come into contact with either in radio or the record industry.

Q Don't you think that's an entirely logical possibility?

A No, I actually believe that the radio airplay on Sirius will only generate more awareness for the artists that we're playing on Sirius and results in more record sales for those artists.

Q So it is your opinion, as I understand it that spending $12.95 a month isn't going to have any effect on how much people are willing to spend on music otherwise, is that right?

A That's correct.

Q In your testimony orally today,

Mr. Blatter, you mentioned on terrestrial stations you sometimes have DJs who talk about the music that they're playing. Do you recall that?

A Yes, I do.

Q And you use the phrase which I now forget, back --

A Back announcing.

Q Back announcing. Thank you. One of the things that terrestrial stations can do because they're local is to do back announcing that promotes a particular concert that's coming to a particular city or a visit by an artist to that city, correct?

A I've heard them do that before, but not always.

Q So that it's possible for record companies, for example, to build a promotion in a local market around a concert announcing by the local DJ in that area, get the artist into that local station and build a promotion locally, is that right?

A It's possible on terrestrial radio, but that happens on Sirius radio as well. I think I had mentioned in my oral testimony that the Rolling Stones channel was developed in conjunction with the Rolling Stones to coincide with their tour as a promotional vehicle to help sell concert tickets for that tour.

Q Let me, actually that raises something I wanted to ask you about. The Rolling Stones channel that you talked about before, I think you said was a limited-run channel?

A Yes, it was.

Q And that was a limited run in connection with some promotions that the Rolling Stones were trying to do, is that right?

A Yes, but I should define that the limited run was initially, I think supposed to be three or four months in cooperation with The Band. It was extended, I think just over

a year, 12 or 13 months.

Q Was there an agreement entered into with the Rolling Stones to put that channel together?

A There was an agreement, I believe, and I did not do the specific negotiations on that deal, but I believe the agreement was with the Rolling Stones, who gave us their approval, as well as Virgin Records, who was putting out their -- I believe owns their masters now, was putting out their current release at the time.

Q So there was an agreement with the entities that were trying to promote the Rolling Stones, the Rolling Stones and the record company that was promoting them, right?

A Yes.

Q Was there any payment to the Stones or to the record company for this channel?

A Not that I'm aware of. I don't think there was.

1 Q Was there any agreement in that
2 between the Rolling Stones or the record
3 company and Sirius with respect to royalties
4 that would be paid for the use of the music?
5 A No, there was not other than the
6 royalties they would normally receive under
7 their current agreement.
8 Q So they weren't willing to waive
9 royalties in order to put together this
10 promotional channel, is that right?
11 A Can you be more specific? I'm not
12 sure that I follow you.
13 Q Sure. As part of the agreement to
14 put together this promotional channel for the
15 Rolling Stones, the Rolling Stones were not
16 willing to waive the royalties that they would
17 get paid for the use of that music, were they?
18 A This kind of goes a little bit out
19 of my area of expertise, but I'll try to
20 answer you. We -- they did receive or would
21 ultimately, I would hope, receive or imagine
22 that they would receive their royalties

1 through SoundExchange as they normally would
2 for an airplay on Sirius. We did receive a
3 waiver from their record company, you know,
4 Virgin EMI, that allowed us to play an
5 unlimited amount of Rolling Stones music on
6 that particular channel, and I don't believe
7 that it was at any cost to Sirius.
8 Q So as I understand the agreement,
9 you could play as much Rolling Stones music as
10 you wanted, but they then got the royalties
11 for the playing of that music, right?
12 A Well, as would any other artist on
13 Sirius, you know, who when we play their music
14 they would get the royalties through
15 SoundExchange.
16 Q The Rolling Stones were not
17 willing to waive their royalties in return for
18 whatever promotional benefit they were getting
19 from this channel, correct?
20 A I couldn't speak to that. I
21 wasn't involved at that level of negotiation.
22 Q Okay, but you know they didn't

1 waive the royalties?
2 A I don't think they did, but I
3 don't
4 --
5 JUDGE WISNIEWSKI: Mr. Blatter,
6 your attorney can't answer the question for
7 you.
8 THE WITNESS: No, I saw him move.
9 I thought he was going to stand up. I didn't
10 think he was going to answer for me.
11 BY MR. HANDZO:
12 Q Now Mr. Blatter, you would agree
13 with me that Sirius competes for listening
14 time with other audio entertainment services,
15 right?
16 A Primarily terrestrial radio, but I
17 believe we compete with all forms of
18 entertainment for listening time.
19 Q So to the extent that somebody is
20 listening to Sirius in the car, they're not
21 listening to a CD or a download, right?
22 A Typically not. That would be

1 difficult to listen to two sources at the same
2 time.
3 Q And isn't it just logical, Mr.
4 Blatter, that to the extent that listening to
5 Sirius displaces time that might have been
6 spent listening to CDs or downloads, people
7 are going to buy fewer CDs or downloads?
8 A If I understand what you mean,
9 Sirius listening might replace listening to
10 something else. What sort of impact it has on
11 the actual cell of recorded music, I can't
12 speak to that. It actually could still
13 contribute to more record sales as a result of
14 that airplay, regardless of how much time
15 they're listening to it.
16 Q Well, I think you mentioned before
17 that there is still no country station in New
18 York, right?
19 A No. There's no country music
20 outlet in the New York market.
21 Q So if I were driving in New York
22 and I was stuck in traffic on West 57th and I

1 wanted to listen to country music, before
2 Sirius or XM, I would have had to put a CD or
3 a cassette in the stereo, right?
4 A That would be one way to listen to
5 country music, sure.
6 Q But now with Sirius I've got a
7 choice of five country music channels, right?
8 A With Sirius, you have the choice
9 of five country channels and another 100 and
10 some odd channels of a lot of other things.
11 Q Right, but if I want to listen to
12 country while I'm stuck at West 57th, I don't
13 need a CD anymore, do I?
14 A No, of course you still would want
15 a CD.
16 Q I don't need it for listening in
17 my car, do I, because I've got five country
18 music channels on Sirius?
19 A I don't believe that radio is a
20 replacement for the CD. I've never seen any
21 evidence of that either.
22 Q Well, you know that Sirius

1 replaces time spent listening to CDs, right?
2 A It could very well.
3 Q You just don't think there is a
4 connection between time spent listening and
5 the number of CDs that you buy?
6 A I do not.
7 Q And you don't think it's
8 reasonable to expect that if people are
9 listening to CDs less, they're going to buy
10 less?
11 A I do not.
12 (Pause.)
13 Q You were asked a couple of
14 questions on direct, Mr. Blatter, about pre-
15 1972 music, do you recall that?
16 A Yes.
17 Q Now some of the pre-1972 music
18 that Sirius plays has been digitally
19 remastered, right?
20 A Some of it probably has been
21 remastered, yes.
22 Q And you don't know how much of the

1 pre-1972 music has been remastered, do you?
2 A I've never quantified that, no.
3 Q Do you know the extent to which
4 sound recordings are played on kids' channels?
5 A Excuse me?
6 Q On kids' channels?
7 A The extent of which?
8 Q Yes.
9 A I can only speak to the -- we have
10 two kids' channels on Sirius. I'm only
11 responsible for the programming on one of them
12 which is on Kids Stuff channel. The other is
13 Disney Radio which is supplied to us from a
14 third party and is not one of our commercial-
15 free music channels.
16 Q Are there sound recordings played
17 on the kids' channel that you're responsible
18 for?
19 A Yes, there are.
20 Q Do you know whether there are
21 sound recordings played on some of the talk
22 shows like Howard Stern?

1 A I'm responsible for the 64
2 commercial-free music channels. I can't speak
3 too knowledgeably about how much music is
4 played on the Howard Stern show. To the best
5 of my knowledge, he doesn't play much music,
6 if any at all.
7 Q But I take then you wouldn't know
8 how much music might be played on other
9 channels that you're not responsible for?
10 A If I'm not responsible for it, I
11 wouldn't be comfortable going on record
12 telling you how much they're playing.
13 Q Mr. Blatter, you talked a little
14 bit in your testimony, I believe, about the
15 use of on-air personalities and DJs, do you
16 recall that?
17 A Yes.
18 Q Now is it fair to say there are
19 some subscribers to Sirius who don't like the
20 DJ chatter, right?
21 A Generally speaking, I don't think
22 that's an issue for us, no.

Q Haven't you seen emails to Sirius saying they want -- consumers want less DJ chatter, not more?

A I've seen those same comments consistently for my entire 20-year career as a radio programmer. What I've learned over the years, when I see that comment is when you dig further with that person that makes that comment, what they really mean is the DJ on that particular channel is not relating and communicating to me in the way I'd expect them to. So in their words, they're saying there's too much DJ chatter, but what they really mean is hey, I like this channel, but the DJ is not talking about things I want to hear about.

Q But in fact, Mr. Blatter, in terms of the emails that Sirius gets from consumers, you get emails from consumers that say I want less DJ talk, I want less DJ chatter, right?

A I personally get very few, if any, emails like that.

Q Sirius gets such emails?

A Like I said like any radio outlet in America, you're going to get -- if you have DJs on a channel, you're going to get certain people that might say hey look, I want less DJ chatter. But what I've learned is that -- what that really means is hey look, the DJ on when I listen doesn't really relate to me. So what we do is we take that information and my programmers then coach and direct the talent to better communicate with the intended audience for that channel.

When we do that, we see that the number of emails you might get about too much DJ chatter declines dramatically.

Q Let me mark this as SoundExchange Trial Exhibit 37.

(Whereupon, the above-referred to document was marked as SoundExchange Trial Exhibit 37 for identification.)

(Pause.)

Mr. Blatter, this is an email to you from Darren Smith, is that correct?

A Yes, it is.

Q And for the record it starts with Sirius Bates Number 22992.

Mr. Blatter, who is Darren Smith?

A Darren is one of the three senior directors of programming that I had mentioned earlier in my testimony.

Q So he reports to you?

A Yes, he does.

Q And did it appear to you what Mr. Smith was doing in this email to you was giving you information on responses to a survey?

A It appears as such, although it is very difficult for me to say what survey this is from and when it was conducted.

Q I'm going to ask you to turn to the second to last page. Do you see there there is an email that says "attached are the verbatim response to foreclosed and

questions"?

A Yes.

Q So does it appear --

A Sorry to have a random response to a closed-ended question, but go ahead.

Q But in any event, this appears to you to be a breakdown of the responses to a survey or surveys that Sirius conducted, correct?

A Yes.

Q And it breaks down what subscribers like most about Sirius and what their complaints about Sirius are, right?

A Yes.

Q This was provided to you in March of 2006, right?

A Yes, it was.

MR. HANDZO: Your Honor, I would move the admission of Sound Exchange Exhibit 37?

CHIEF JUDGE SLEDGE: Any objection to the Exhibit No. 37?

1 MR. KIRBY: No.
2 CHIEF JUDGE SLEDGE: Without
3 objection, Exhibit No. 37 is admitted.
4 (The document, having
5 been marked previously
6 for identification as SX
7 Exhibit No. 37, was
8 received in evidence.)
9 BY MR. HANDZO:
10 Q Mr. Blatter, looking at the first
11 page --
12 CHIEF JUDGE SLEDGE: Mr. Kirby?
13 MR. KIRBY: Yes, Your Honor. This
14 is relatively current research data concerning
15 what our customers like and don't like about
16 our service, at least that's what I understand
17 it to be., Such information, of course,
18 obviously is highly competitively sensitive
19 and I would move that it be protected under
20 the Court's confidentiality procedure.
21 CHIEF JUDGE SLEDGE: It is not
22 highly sensitive in my experience. Do you

1 want to pursue that further?
2 MR. KIRBY: May I voir dire the
3 witness, please, Your Honor?
4 CHIEF JUDGE SLEDGE: Yes.
5 VOIR DIRE
6 BY MR. KIRBY:
7 Q Mr. Blatter, is this information
8 the type of information that Sirius would
9 typically make available to XM?
10 A We typically, you know, in our
11 normal course of business, do not make any of
12 our internet research available to XM.
13 Q I understand. Would there be --
14 do you believe that there would be competitive
15 consequences if this information were made
16 available?
17 A Absolutely.
18 Q If you had this kind of
19 information about XM, would it help you in
20 making programming choices against XM's
21 program?
22 A I would love to get my eyes on

1 it,if I could do it legally.
2 Q Do you know of any legal way that
3 you could get this kind of information about
4 XM?
5 A No, I do not.
6 CHIEF JUDGE SLEDGE: An objection
7 to applying the protective order?
8 MR. HANDZO: No, Your Honor.
9 CHIEF JUDGE SLEDGE: Without
10 objection, the motion is granted.
11 BY MR. HANDZO:
12 Q Mr. Blatter, turning to the first
13 page of this Exhibit No. 37, if you see two
14 thirds of the way down the page there's a line
15 for DJs?
16 A Yes, I do.
17 Q And those numbers there state the
18 number and the percentage of people who said
19 they liked the DJs?
20 A I'm not sure if that's people who
21 mentioned DJs as a descriptor for them or they
22 mentioned individual DJ names.

1 Q Which ever one it is, this appears
2 to be people who like either DJs generally or
3 specific DJs?
4 MR. KIRBY: Your Honor, that
5 misstates the exhibit. The question appears
6 is what do they like most about Sirius,
7 instead of this response would be people who
8 liked DJs most. CHIEF JUDGE SLEDGE: Mr.
9 Handzo?
10 MR. HANDZO: I'm happy to rephrase
11 the question, Your Honor.
12 CHIEF JUDGE SLEDGE: All right.
13 BY MR. HANDZO:
14 Q Let me just ask this, Mr. Blatter.
15 The one that says DJs, you understand that to
16 be a reference either to DJs on Sirius
17 generally or specific DJs, right?
18 A No, I'm not sure if it includes
19 specific DJs rolled up into that number or
20 not. I do notice at the bottom here there is
21 a DJ mentioned, Pat St. John, and there are
22 other DJs scattered throughout here. I'm not

1 sure if that DJ's total number there includes
2 individual DJ mentions or DJ mentions just as
3 a whole.
4 Q Well, if you go to the next page
5 of this, do you see down the page there's a
6 line that says "less DJ chatter"?
7 A Yes, I do.
8 Q So there's people who think the
9 best thing of Sirius has less DJ chatter?
10 A Yes, 8 out of the 2048 said they
11 want less DJ chatter, statistically
12 meaningless number.
13 Q Now if you turn to the fourth
14 page.
15 A Yes.
16 Q Do you see the category that says
17 "complaints, Sirius complaints"?
18 A Yes, I do.
19 Q And there's a list of complaints
20 that runs on for one, two, three, four,
21 carrying over to the fifth page?
22 A Yes.

1 Q And it appears to be the -- the
2 responses appear to be ranked in order of the
3 number of people who made that complaint?
4 A Well, I'm not so sure if these are
5 necessarily all complaints because as I look
6 at the bottom, some of these -- while they're
7 classified as complaints, they're just asking
8 for more of something else, so more classic
9 rock or more dance channels and so on. I'm
10 not sure if complaints, I know that's the way
11 it's referred to in this document, but they're
12 not necessarily all complaints.
13 Q Okay. There's a line in the
14 fourth page of this document which says "DJs
15 talk too much"? Do you see that?
16 A Yes, that's actually what I
17 believe to be a remarkably low percentage
18 based on what I've seen in my 20 years as a
19 radio programmer having researched this
20 subject before.
21 Q It's actually one of the top
22 complaints that is listed here, isn't it?

1 A At two percent, I wouldn't
2 consider it to be a top complaint, no.
3 CHIEF JUDGE SLEDGE: You have not
4 responded to the question.
5 THE WITNESS: Well, can you
6 explain to me what you mean by top complaint?
7 BY MR. HANDZO:
8 Q Well, just looking at the list, we
9 agreed that the complaints are ranked in order
10 of the number of people who responded with
11 that complaint, right?
12 A Yes, I mean they're ranked in
13 order.
14 Q And DJs talk too much is ranked
15 very much near the top, isn't it?
16 A Well, there's a huge disparity
17 between one reception of 19 percent and DJs
18 that talk too much at 2 percent. So I think
19 it's a little bit misleading to say it's a top
20 complaint.
21 Q But it is ranked near the top,
22 right?

1 A It's ranked number six, yes, out
2 of a number of things, but like I said, to me,
3 as an industry veteran and done nothing my
4 entire career but programmed radio, two
5 percent is a remarkably low number.
6 Q And if you flip to the next page
7 you'll see a line that says "Jim Brewer"? Is
8 he a DJ?
9 A He's a talk show host. Also
10 former cast member of Saturday Night Live and
11 has appeared in a bunch of movies.
12 Q And the next page you'll see a
13 line for Rick Dees, is that a DJ?
14 A He's a DJ, but he's not on Sirius.
15 (Laughter.)
16 I think it's important to mention
17 as well that radio is generally a passive
18 medium. And when you go back and ask people
19 to respond to these types of questions, they
20 often don't give you accurate responses,
21 particularly when it comes to DJ names.
22 That's a good example. Rick Dees isn't even

1 a DJ on Sirius.
2 JUDGE WISNIEWSKI: What does that
3 have to do with it being a passive media?
4 THE WITNESS: People sometimes
5 have a hard time recollecting what they heard
6 because it is a passive media.
7 BY MR. HANDZO:
8 Q Mr. Blatter, I'm going to show you
9 what was marked as SoundExchange Trial Exhibit
10 38.
11 (Whereupon, the above-
12 referred to document was
13 marked as SoundExchange
14 Trial Exhibit No. 38.)
15 (Pause.)
16 Do you recognize this document as
17 an email to you from Steve Leeds?
18 A Yes, I do.
19 Q Who is Mr. Leeds?
20 A Mr. Leeds is my Vice President of
21 Artist and Talent Relations.
22 Q What is his job? What does he do?

1 A He's responsible for the group of
2 people I mentioned earlier in my testimony
3 that work closely with the record companies to
4 have them participate in our programming or
5 artist interviews and special programming that
6 we might be doing in some cases enhance the
7 programming of the channel. In other cases it
8 is to help that artist get some additional
9 promotion for what it is they are promoting at
10 that time.
11 Q So he is somebody who works with
12 the record companies a lot?
13 A Yes, he is.
14 Q This email was sent to you by Mr.
15 Leeds on April 9, 2006. Is that right?
16 A Yes, it is.
17 MR. HANDZO: Your Honor, I move
18 the admission of SoundExchange Trial Exhibit
19 38.
20 CHIEF JUDGE SLEDGE: Any objection
21 to Exhibit 38?
22 MR. KIRBY: No, Your Honor.

1 CHIEF JUDGE SLEDGE: Without
2 objection, Exhibit 38 is submitted.
3 (The document, having
4 been marked previously
5 for identification as SX
6 Exhibit No. 38, was
7 received in evidence.)
8 MR. KIRBY: May I have one moment,
9 Your Honor, on the confidentiality issue I
10 might explore?
11 (Pause.)
12 Thank you, Your Honor. I have no
13 motion with respect to this document.
14 BY MR. HANDZO:
15 Q Now in this email to you, Mr.
16 Blatter, Mr. Leeds refers to the tried and
17 true avenues of exposure. Do you see that?
18 That's near the top of the email?
19 A Yes.
20 Q And what he is talking about there
21 is the tried and true avenues for exposure for
22 new music, right?

1 A Well, he doesn't appear to be
2 specific to new music.
3 Q Well, he is talking about in the
4 previous sentence the labels. Do you see
5 that?
6 A Yes.
7 Q And that is a reference to the
8 record companies, right?
9 A Right.
10 Q And in that context, you
11 understand him to be talking about the tried
12 and true avenues of exposure for the record
13 companies?
14 A Appears to be, yes.
15 Q Okay, and he is saying that the
16 tried and true avenues for exposure are
17 television, cable, print, retail exposure, and
18 websites, right?
19 A That appears to be his opinion,
20 yes.
21 Q And he doesn't say anything about
22 satellite radio though, does he?

1 A Not right there, no.
2 Q In fact, when he does talk about
3 satellite radio down below, what he says is
4 right now we are offered the more newer baby
5 acts. Do you see that?
6 A Yes, I do.
7 Q And what he's telling you there is
8 that in terms of getting artists to perform
9 live on Sirius, the only things that you were
10 being offered were the baby acts, right?
11 A That was his opinion at that time.
12 Q Okay, and you weren't getting the
13 A level acts, right?
14 A That was his opinion at that time.
15 Q But he is your guy who deals with
16 the record companies, right?
17 A No, my entire programming team
18 deals with the record companies. He's one of
19 many.
20 Q But it is his job to go out and
21 get artists to perform on Sirius, isn't it?
22 A That's part of his job, but his

1 department does act more as a facilitator. In
2 a lot of cases, it is the programmers
3 themselves where the requests come in through
4 and then they are then referred to the talent
5 department or the talent department will
6 sometimes initiate that request as well. It
7 doesn't all fall on the artists and talent
8 department.
9 Q I think you told us at the outset
10 of your oral testimony, Mr. Blatter, that
11 there is a group under your supervision called
12 the talent and industry relations group, is
13 that right?
14 A Yes.
15 Q Is that the group that Mr. Leeds
16 runs?
17 A Yes, and I think I've stated that
18 group works very closely with my programmers
19 to conduct their activities.
20 Q In terms of bringing in talent to
21 do live concerts on Sirius, it is Mr. Leeds
22 group, talent and industry relations group,

1 that deals with the record companies, right?
2 A No, that is not correct. They
3 work very closely with my programmers to book
4 those interviews or live performance or
5 whatever it might be.
6 Q But Mr. Leeds is talking to the
7 record companies about those subjects?
8 A He does as a well as all of my
9 programmers.
10 CHIEF JUDGE SLEDGE: When you were
11 responding to talent and industry, I thought
12 you said earlier it was artist and talent.
13 THE WITNESS: Yes, they get used
14 somewhat interchangeably or have in the past.
15 I'm actually trying to clean that up a little
16 bit internally in the industry. We're now
17 referring to the department as the artist and
18 talent relations department.
19 BY MR. HANDZO:
20 Q Now with respect to getting
21 artists to do live concerts on Sirius, having
22 those live concerts is a benefit to Sirius, is

1 it not?
2 A In some cases it's a benefit to
3 Sirius. In other cases, it's more of a
4 benefit to the artists themselves.
5 Q But certainly there are well-known
6 artists with respect to whom it is very
7 beneficial to Sirius to have an exclusive live
8 concert from that artist, right?
9 A I'm sorry, can you restate that?
10 Q Sure. For more popular artists,
11 it is very beneficial to Sirius to have that
12 artist come on Sirius and do a live, exclusive
13 concert, right?
14 A I wouldn't say it's more
15 beneficial to Sirius. I mean --
16 Q I didn't mean to put it in terms
17 of relative importance. It is helpful to
18 Sirius to have those artists come on and do
19 concerts for you, right?
20 A We think that's something our
21 subscribers like hearing, yes.
22 Q So is it fair to say that getting

1 artists to come on and do live concerts for
2 Sirius is a two-way street. There's some
3 benefit to the artists and there's some
4 benefit to Sirius from that?
5 A Yes, but there are many instances
6 where there actually is very little benefit to
7 us, but we do it to help further our
8 relationship with the record companies.
9 Q And there are situations where you
10 think there is very real benefit to Sirius,
11 correct?
12 A I don't think any one concert
13 performance has a real benefit to Sirius. I
14 think in aggregate, if we do a lot of live
15 performances that our subscribers want to
16 hear, then it is a benefit to us, but I think
17 it's important to note that a lot of times we
18 do these live performances, in a lot of cases
19 it's actually a turnoff to our subscribers,
20 but we're doing it to help the record company
21 establish that new artist.
22 JUDGE WISNIEWSKI: Why? Are you

1 just good hearted?
2 THE WITNESS: Well, it's not that
3 we're good hearted, but we're in some ways in
4 this for the music too and certain channels
5 that are music oriented, we do like to take
6 risks and work with the record companies to do
7 whatever we can to help them break a band and
8 sometimes having them come up to our studios
9 and perform live while the audience for that
10 channel might not have ever heard of this
11 artist before, we're saying hey, check this
12 out. We think it's good. You might like it
13 too. A lot of times when we do that, the
14 listeners of the channel are saying who is
15 this new act? I don't even like them and now
16 they're playing live on your air? Why are you
17 doing this? We say, you know, it's a risk we
18 take, but we do it to further our
19 relationships with the record companies.
20 JUDGE WISNIEWSKI: When you
21 mentioned that before -- and pardon me for
22 interrupting Mr. Handzo, you talked about

1 spending a lot of time working with record
2 companies to break new artists. That puzzled
3 me. If you get no benefit out of it, why
4 would you do it?
5 THE WITNESS: We get no benefit
6 out of the actual recorded sale of the music.
7 JUDGE WISNIEWSKI: I understand
8 that part, but do you get some benefit? Do
9 you feel you get some benefit?
10 THE WITNESS: Well, on certain
11 channels that are new music intensive, I think
12 it's important for those channels to continue
13 to sound fresh and bring new artists into the
14 fold that we think the listeners to that
15 channel might find interesting.
16 Most new artists that we actually
17 play don't ever actually become successful, so
18 in a given week a typical channel has three or
19 four new songs, when the year is done, if we
20 added 150 new songs a year on that particular
21 channel, if ten of them really stuck and
22 became big successes, that would be a good

1 year.
2 JUDGE WISNIEWSKI: I understand
3 that you take a risk. That's what all
4 businesses do. They take a risk, don't they,
5 in order to eventually have some success and
6 get some benefit out of taking those risks?
7 Isn't that a fair statement?
8 THE WITNESS: There is risk in
9 playing these new artists.
10 JUDGE WISNIEWSKI: Doesn't that
11 work here too that you get some benefit out of
12 if if they succeed?
13 THE WITNESS: We don't get a
14 direct financial benefit of their success, but
15 I think it is helpful to the radio station to
16 help contribute to the success of that
17 artist's career.
18 JUDGE ROBERTS: Mr. Blatter, you
19 used the word "risk" several times. What
20 risk?
21 THE WITNESS: Well, if we play too
22 many new songs on a particular channel, you

1 will find that the satisfaction to that
2 channel and ultimately the service as a whole
3 could go down. So it's a very fine line that
4 we tread as programmers trying to figure out
5 how much new music to play on a particular
6 channel. If it's not a channel that plays
7 nothing but new music and even on there you
8 have to have some boundaries and some limit to
9 the amount of new music that you play, but on
10 most of the channels that we offer, there is
11 I guess a diminishing return when it comes to
12 satisfaction which is ultimately what we're
13 judged by, depending upon how much new music
14 you play.
15 JUDGE ROBERTS: So some music is
16 good, that drives the satisfaction level up,
17 but there's some point out there that it
18 starts to go down?
19 THE WITNESS: Well, if we play too
20 much new music on a particular channel, then
21 satisfaction could come down. Yes. And where
22 that line is is different by channel.

1 CHIEF JUDGE SLEDGE: While we're
2 all jumping in, the responses to Judge
3 Roberts' questions makes me curious why you
4 add the qualifier to Judge Wisniewski's
5 questions that it's a benefit to have new
6 artists if they're successful. If what the
7 ultimate result of their career, why is that
8 important as to whether it adds freshness to
9 a channel and make a channel more satisfying?
10 THE WITNESS: Why is that
11 important to us?
12 CHIEF JUDGE SLEDGE: Yes, why is
13 it important to you?
14 THE WITNESS: Well, I think, for
15 instance, in the country format, whether
16 there's actually a fair amount of stability
17 with the new artists that are exposed on
18 country radio, but every few years a couple of
19 new artists do break through and become very
20 successful and for a format not to get stale,
21 it is important to be able to introduce new
22 artists on a fairly regular basis. Like I

1 said earlier, not all of them always stick,
2 but we do think it's important to introduce
3 new artists to keep the station sounding
4 fresh.
5 CHIEF JUDGE SLEDGE: I guess I
6 have trouble both with country artists and
7 NASCAR drivers understanding how audio helps
8 them since the decision of successful country
9 artists and NASCAR drivers depends on their
10 physical appearance more than anything else.
11 (Laughter.)
12 CHIEF JUDGE SLEDGE: And you can't
13 portray their physical appearance.
14 THE WITNESS: No, we can't. But I
15 will say in a country format, I think there
16 are plenty of artists that have been
17 successful where their physical appearance had
18 no impact on their -- it didn't hold them back
19 from being successful.
20 CHIEF JUDGE SLEDGE: In the last
21 five years?
22 (Laughter.)

1 THE WITNESS: I can't think of any
2 offhand, but I believe there have been.
3 CHIEF JUDGE SLEDGE: They appear
4 to be more pin up people than they are
5 singers.
6 Mr. Handzo?
7 MR. HANDZO: Thank you.
8 BY MR. HANDZO:
9 Q Mr. Blatter, I think you stated
10 earlier in your testimony that in your
11 position, you're judged by whether subscribers
12 to Sirius are satisfied with the music
13 channels, right?
14 A Yes.
15 Q And so when you make decisions
16 about whether to play new music or how much
17 new music to play or whether to get live acts,
18 basically what you're trying to do is as much
19 as you can increase subscriber satisfaction
20 with the music channels that you're
21 responsible for, right?
22 A I think that's the ultimate goal

1 in any decision a programmer makes day to day,
2 is will this help further satisfy the intended
3 audience for this channel.
4 Q So the answer to my question is
5 yes?
6 A I think you only asked it specific
7 to music, but I'm saying it's -- there are a
8 number of things that contribute to the
9 satisfaction of the channel that go beyond the
10 music.
11 Q But with respect to the decisions
12 you make about what music to play and what
13 live acts to put on, that's your guiding
14 principle, right, what's going to increase
15 subscriber satisfaction?
16 A I don't think the programmers day
17 to day think of it in such terms, but
18 ultimately that is our goal is to, as a whole,
19 all of our programming should be as -- we're
20 trying to create the most satisfactory
21 experience that we can.
22 Q Thank you. That's all I have.

1 CHIEF JUDGE SLEDGE: We will
2 recess for the mid-day break for one hour.
3 (Whereupon, at 12:30 p.m., the
4 hearing was recessed, to reconvene at 1:30
5 p.m.)
6 CHIEF JUDGE SLEDGE: Mr. Handzo?
7 MR. HANDZO: Your Honor, I've
8 completed my cross.
9 CHIEF JUDGE SLEDGE: Okay. Any
10 redirect?
11 MR. KIRBY: Yes, Your Honor.
12 REDIRECT EXAMINATION
13 BY MR. KIRBY:
14 Q Mr. Blatter, turn back if you
15 would to Exhibit 38, the e-mail from a Mr.
16 Leeds. Do you have that in front of you?
17 A Yes, I do.
18 Q Okay. When was this e-mail sent?
19 A This e-mail was sent on April 9,
20 2006, so approximately one year and two months
21 ago.
22 Q After you received this e-mail,

1 did you discuss it with Mr. Leeds?
2 A Yes, I do recall a discussion that
3 Mr. Leeds and I had soon after this e-mail was
4 sent to me. And we discussed what he wrote in
5 this e-mail in great detail, and I think it's
6 important to note that, like in any business,
7 certain people have really bad days. This e-
8 mail was written after Steve had a really bad
9 day. I think you can see on top there it was
10 written pretty late at night.
11 And after Steve and I had a pretty
12 in-depth conversation about what he put in
13 this e-mail, he even said to me, "You know
14 what? You're right. I think I kind of blew
15 things a little bit out of proportion, and I
16 agree with you that things in our
17 relationships with the record companies and
18 the artists they represent are a lot stronger
19 than the way they're made out to be in this
20 document."
21 Q Even though Mr. Leeds was having a
22 bad day, I direct your attention to the last

1 paragraph there. Did what he said in that
2 last paragraph turn out to be perceptive?
3 A Yes, it was. And as I think I
4 stated earlier in my testimony, many of the
5 Sirius music channels now are reporting radio
6 stations to the major trade publications
7 within the radio industry. As a result of
8 becoming reporting stations, the cooperation
9 that we've had from the record companies and
10 management companies and publicists has
11 increased substantially since this document
12 was written over a year ago.
13 Q And when he talks in the last
14 sentence there about, "The senior promo execs
15 will be forced into treating Sirius on a level
16 playing field," have in fact you found that
17 the senior promo execs are treating Sirius as
18 the promotional equivalent to terrestrial
19 radio?
20 A Not only as an equivalent, in some
21 cases they are treating us even better than
22 terrestrial radio.

1 Q I want to talk just very briefly
2 with you about this issue of substitution of
3 Sirius for CD sales. Just looking back over
4 your 20-plus years of experience in
5 terrestrial radio and with Sirius in the
6 programming area, has any representative of
7 any music label ever said to you, "Steve,
8 you've got to stop playing our music; it's
9 killing our sales"?
10 A That has never once happened to me
11 or any colleague that I work with at Sirius,
12 or, for that matter, I don't know of any radio
13 program in America that was ever asked by a
14 record company to stop playing a particular
15 piece of music. In fact, I don't ever recall
16 speaking to a record executive that has ever
17 told me that they've asked a radio station to
18 stop playing a particular piece of music.
19 Q And what about artists? Has any
20 artist called up and said, "Steve, you're
21 giving me too much exposure here. People are
22 listening to you; they're not buying my CDs.

1 You've got to take me off the air"?
2 A No. Never once in my career has
3 an artist asked us to not play their music.
4 MR. KIRBY: That's all I have,
5 Your Honor.
6 CHIEF JUDGE SLEDGE: Any other
7 questions from the services? Any further
8 cross?
9 MR. HANDZO: No, Your Honor.
10 CHIEF JUDGE SLEDGE: Any questions
11 from the bench?
12 (No response.)
13 Thank you, sir. That's all.
14 THE WITNESS: Thank you, Your
15 Honor.
16 CHIEF JUDGE SLEDGE: Mr. Joseph?
17 MR. JOSEPH: Your Honor, Mr. Sturm
18 will call our next witness.
19 CHIEF JUDGE SLEDGE: All right.
20 MR. STURM: Your Honor, Sirius
21 calls Christine Heye.
22 CHIEF JUDGE SLEDGE: Ms. Heye,

SX Trial Ex. 37

THIS EXHIBIT IS RESTRICTED

SX Trial Ex. 38

From: "Leeds, Steve" </O=SIRI/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SLEEDS>
To: "Blatter, Steve" <SBlatter@siriusradio.com>
Subject: Where we stand.....
Date: 04/09/2006 00:29:29 UTC

I noticed you were surprised when I described some of the label's attitude toward satellite radio---SIRIUS in particular.
Given the horrible state of things at almost all the labels; its hard for them to focus on anything other than what they know and to keep their job. The traditional tried and true avenues of exposure...television, cable, print, retail exposure and websites provide a comfort level that most veteran label marketers can relate to.. AOL has spent several years building their music franchise and their reach and global nature have made them an addition to artist launches.(I pioneered the first urban and latin artists with Nelly and Paulina Rubio) The more adventuresome souls or I rather call 'em enlightened seem to come from the indie and/or urban sector. Given the reduced marketing/promo budgets; most labels attempt to analyze or "research" how and where to spend their money and place manpower. Artist availability and willingness to work forces a need for setting priorities Since we don't fit into a established box--its difficult to quantify in their world exactly what our impact is.
SWR is the first baby step.
Right now we are offered the more newer baby acts. Eventually we get the "A" level acts as we continue to wear down the excuses. The goal is for SIRIUS to become "top of mind" at not just some of the labels ; but everywhere! As our subscriber base grows this will happen.
XM has key outside relationships that they pay for which provides them with a continuous flow of live concerts. I believe we beat them everytime when it comes to the major acts.....Stones, Gilmour, Nelly, Springsteen etc. Our relationships are stronger.
To help eliminate some of the label excuses and clearly show our strength as a marketing partner; we need to provide basic, broad overview data that quantifies our reach and potential impact. (I realize that some of this info may be difficult to provide currently)

- **Ranking in order of our most listened to music channels (top 10?)**
- **Interactivity-requests ..how we gauge listener feedback-perhaps a request chart?**
- **Extrapolation of audience numbers. Age and gender**
- **Geographic hotspots where we have concentrated listeners**
- **A question that is frequently asked is: if we have the technology, like cable, to address subscriber's radios--why don't we use that technology to learn more about our subscribers musical preferences? (why is that not part of our business plan?)**

The above data, if provided in a simple one page bullet form document, will help resolve concerns at those labels who want to know more about our audience. The other area we need to focus in on is how we can get full fledged reporting status @ R&R. While it seems almost foolish--much of the music industry does still look at those charts. When our ability to spins songs impacts those charts (like it does @ BDS); the senior promo execs will be forced into treating SIRIUS on a level playing field. The goal here is to accelerate the timetable.

Ultimately we **will** succeed !

SX Trial Ex. 38