



REDACTED - FOR PUBLIC INSPECTION

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July 14, 2008

VIA HAND DELIVERY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Office of the Secretary  
236 Massachusetts Avenue, NE, Suite 110  
Washington, D.C. 20002

Re: MB Docket No. 07-57  
REDACTED - FOR PUBLIC INSPECTION

Dear Ms. Dortch:

The Consumer Coalition for Competition in Satellite Radio ("C3SR"), by its counsel, hereby submits, in the above-referenced proceeding, two redacted copies of the attached written ex parte notice. C3SR, pursuant to the terms of the Second Protective Order,<sup>1</sup> is separately filing one unredacted copy with the Secretary's Office, and two unredacted copies with Jamila Bess Johnson of the Media Bureau.

Respectfully submitted,

Mary Virginia Mangum  
Counsel to C3SR

Enclosures

<sup>1</sup> *Applications of Sirius Satellite Radio Inc. And XM Satellite Radio Holdings Inc. for Approval to Transfer Control, Protective Order, DA 07-4666 (rel. Nov. 16, 2007).*

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July 14, 2008

**BY ELECTRONIC TRANSMISSION**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentations in Connection With the Consolidated Application for Authority to Transfer Control in Connection With the Sirius/XM Merger, as Amended (MB Docket No. 07-57)

Dear Ms. Dortch:

On July 11, 2008, Jerry Kilgore and Julian Shepard of Williams Mullen, counsel to the Consumer Coalition for Competition in Satellite Radio ("C3SR"), telephoned Amy Blankenship, Media Advisor to Commissioner Tate, and Wayne Leighton, Special Advisor, Wireless & International, to Commissioner Tate, and discussed the issues raised in C3SR's May 27<sup>th</sup> written *ex parte* filing ("C3SR's Letter") in the above-referenced proceeding and the facts revealed in the highly confidential documents referenced therein.

If the Commission embraces the argument of Sirius and XM that the FCC's rules requiring them to include interoperable receivers in their final systems did not require Sirius and XM to bring interoperable receivers to the market, [REDACTED]

[REDACTED] If there was no government requirement for [REDACTED] interoperable receivers, then there is no way to argue that the problematic conduct was exempt from the antitrust laws, or somehow covered by a safe harbor because of the need to comply with government regulation.

[REDACTED]

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[REDACTED] The Commission cannot excuse this conduct to reach a public interest decision, without the public being made whole for the harms.

C3SR's June 4, 2008, *ex parte* submission outlines the harms and the appropriate remedies. None of the proposed concessions are adequate. The channel set-aside or channel-lease proposals are insufficient, and they fail to cure the harms or create a competitive market for satellite radio service. Mandatory replacement of all subscriber receivers with interoperable receivers and full divestiture of an entire satellite system are wholly justified by the facts in the record of this proceeding. FCC approval of this merger would permit XM and Sirius to avoid the very competition that they have conspired to suppress by withholding interoperable receivers from the marketplace.

Pursuant to Section 1.1206 of the Commission's Rules and DA-07-1435, C3SR submits this letter via ECFS for inclusion in the public record with e-mail copies to Amy Blankenship and Wayne Leighton.

Respectfully submitted,

Julian L. Shepard

cc (by e-mail): Amy Blankenship  
Wayne Leighton