



Richard Ramlall
Senior V.P., Strategic & External Affairs

Assistant: Teri Wissinger
(703) 434-8408
fax (703) 434-8409
Richard.Ramlall@rcn.net

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VIA ECFS/ELECTRONIC FILING

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte Letter*, MB Docket No. 07-57
Consolidated Application for Authority to Transfer Control of
XM Radio Inc. and Sirius Satellite Radio Inc.

Dear Chairman Martin:

On behalf of RCN Corporation and its operating subsidiaries ("RCN"), I am regrettably writing to express RCN's deep concern that, while they seem aimed at ameliorating the competitive loss of competition in the field of satellite radio, RCN's recent experience with Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. ("Applicants") indicates that their 'voluntary commitment' to expanding consumer choice in programming may only be skin deep.

A review of the record in this long and complex matter reveals considerable concerns that have been raised by a number of diverse commenters as to the potential effect that the proposed combination of the only two national satellite radio operators could have on consumer choice in programming. And RCN appreciates that the Commission has listened carefully to those concerns and that, as a result, the Applicants have proposed certain commitments that are aimed at addressing concerns about consumer choice in the programming that they will be able to obtain from the combined company. (*See Ex Parte Letter* from Counsel for Applicants, dated June 13, 2008 and filed June 16, 2008, proposing to undertake certain voluntary commitments to increase programming choice to end users.)

Some commenters have questioned just how far Applicants' commitments go toward truly increasing consumer choice, and RCN must regrettably agree that the Applicants' efforts in this regard appear to go no deeper than to promise the minimum necessary to convince the Commission to approve the proposed merger, and do not reflect any serious commitment that, once approved, the combined company will embrace the goal of truly increasing consumer choice.

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It is particularly noteworthy that the Applicants are only proposing to give their subscribers several options in the programming packages they purchase from the Applicants, and are not in providing any additional options in terms of the way in which that programming is delivered. Yet the latter is equally important in the context of their intention to remove a competitor from an already tiny market of national audio programming suppliers. The interest that RCN brings to this proceeding is therefore to urge that the Commission assure, prior to approving the merger, that the commitment made by Applicants truly embraces the concept of consumer choice by requiring that the combined company continue to offer music and other programming services to other distributors such as cable operators for delivery to consumers, and that they not be permitted to unreasonably discriminate among such distributors.

RCN had hoped not to have to raise this issue in the context of this merger proceeding and has made diligent efforts over a long period of time to reach a 'voluntary agreement' as opposed to having to enlist the Commission's assistance in obtaining an enforceable 'voluntary commitment.' But although as late as last week RCN received positive indications that one of the Applicants was going to provide a counter-proposal to RCN's effort to secure an agreement to distribute music and other programming over its cable networks, it appears that as that Applicant becomes more confident of imminent Commission approval, such a proposal is becoming less likely, and that Commission intervention is therefore required in the public interest.

It is inexplicable to RCN why, if they are interested in promoting consumer choice, and if they have a product to sell, Applicants would foreclose cable operators like RCN from becoming a distribution channel for that product. Indeed, RCN is aware that each Applicant currently sells programming to one or the other direct broadcast satellite operator, and on information and belief, that such programming is provided to them at rates considerably below those that were offered to RCN at a time when the Applicants were still willing to negotiate with RCN. Their unwillingness to negotiate for an additional channels of distribution to consumers bodes ill for any meaningful commitment to consumer choice following the merger.

The only other available source for comparably high-quality audio programming that will remain in the market following the proposed merger is Music Choice – a Comcast-controlled company. Therefore, even though far from competitive when both Applicants are still separate entities, the combination of the two will mean that Music Choice/Comcast will face no meaningful competition whatsoever given the most recent pre-merger statements of the Applicants that they are altogether uninterested in expanding their distribution channels to cable TV operators like RCN – and more importantly, in offering consumers choice in how they obtain audio programming.

Accordingly, RCN urges that the Commission request an explanation from the Applicants as to their intentions with respect to offering reasonable and nondiscriminatory wholesale



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services that, in the absence of two satellite radio operators, will preserve some choice for consumers in how they obtain service and that the merger be conditioned on assurance that such service will in fact be available. And given what appears from other parties' filings in this docket to be a propensity on Applicants' part to ignore the rules of the Commission, RCN urges that such assurances be backed up by very clear enforcement mechanisms that are available to the Commission. We believe that this is entirely consistent with the other efforts of the Commission in this docket to assure the continuation of consumer choice following the combination.

Sincerely yours,



Richard Ramlall
Senior Vice President,
Strategic & External Affairs and Programming

cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Ms. Monica Shah Desai
Ms. Catherine Bohigan
Ms. Amy Blankenship
Mr. Rudy Brioché
Mr. Rick C. Chessen
Ms. Renée Roland Crittendon
Ms. Angela E. Giancarlo
Mr. Bruce Liang Gottlieb
Mr. Wayne Leighton
Ms. Cristina Chou Pauzé