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To: All Clients

September 3, 2008

XM/SIRIUS MERGER APPROVED

The FCC has approved the merger of XM Satellite Radio Holdings, Inc. ("XM") and Sirius Satellite Radio Inc. ("Sirius"), effectively authorizing one entity to serve as the only FCC-licensed satellite radio provider.

In approving the merger, the FCC reviewed the potential impact of the transaction on competition and diversity, the public interest benefits that XM and Sirius claimed would result from the combined company, the public interest harms posed by the merger, balanced against the benefits to be gained thereby, and whether the transaction complies with the Communication Act, other applicable statutes, and the FCC's rules and policies. The FCC stated that its principal concern was the impact that the combined company would have on market competition.

Both the FCC and the Department of Justice ("DOJ") are to consider how a transaction will affect competition by (i) defining what "relevant market" will be affected by the merger, (ii) ascertaining the market power of the incumbent competitors, and (iii) analyzing barriers to entry by new competitors, and the efficiencies that may result from the proposed transaction. While the DOJ prohibits telecommunications mergers that substantially lessen competition, the FCC's competition analysis is broader, and focuses on whether the transaction will enhance, rather than merely preserve, existing competition, and also considers the potential for future competition in the relevant market. In addition, the FCC examines the merger's potential impact on diversity, localism and other public interest factors. The FCC

determined that there was insufficient evidence in the record to predict the likelihood of anti-competitive harms posed by the XM/Sirius merger, even applying what it termed a "worst case" assumption, narrowly defining the "relevant market" and considering the effect the merger would have upon the "satellite radio" market. By defining the relevant market as the "satellite radio" market, the FCC determined that the merger of the only two competitors into a single monopoly was anti-competitive and detrimental to the public interest. Despite this determination, however, the FCC held that certain voluntary commitments of XM and Sirius would sufficiently negate the anti-competitive concerns, and would result in an overall net public interest benefit. In approving the merger, the FCC concluded that the merged company would be able to offer a wider array of programming choices at various prices, and would afford consumers greater control and choice over the programming to which they subscribe.

Voluntary Commitments of the Merged Company

The FCC conditioned its consent on the following "voluntary" commitments of XM and Sirius:

Immediately Upon Merger:

- The merged company must license, on reasonable and non-discriminatory terms, the intellectual property related to the basic functionality of satellite radios, allowing third parties to develop equipment for subscribers. The merged company cannot prohibit such third parties from including HD

- Radio chips, iPod compatibility, Internet connectivity, or other technologies in their designs. No licenses may be offered on an exclusive basis.
- The merged company cannot raise the price of the basic retail subscription package, the new “a la carte” package, or any other new programming packages, or reduce the number of channels in these packages for at least three years. After the first anniversary of the consummation of the merger, the merged company may pass through cost increases incurred since the filing of the merger application as a result of statutorily or contractually required payments to the music, recording, and publishing industries for the performance of musical works and sound recordings or for device recording fees. Six months prior to the end of the three year period, the FCC will determine whether the price caps should be extended beyond the three year period.
- The company must make 4% of the full-time audio channels on both the XM and Sirius platforms available for non-commercial educational and informational programming similar to those required of direct television broadcast satellite service.

Within Three Months After Merger:

- The first a la carte capable radios must be introduced, and a la carte programming must be offered. The a la carte programming options will include either 50 Sirius channels or 50 XM channels, with the option to purchase additional single channels, or 100 channels from the “best of” both XM and Sirius.

- The merged company must offer the option of a “mostly music” or news, sports or talk package.
- The merged company must offer a “family-friendly” package of existing Sirius or XM programming, and a “family friendly” package of both combined services.
- The merged company must file applications with the FCC to provide the Sirius service to Puerto Rico using terrestrial repeaters, and promptly introduce the service once those applications have been granted.

Within Four Months After Merger:

- The merged company must enter into program agreements to provide entities that are majority owned by persons who are African American, Asian or Pacific Islanders, American Indians or Alaskan Natives, or Hispanics the right to program 4% of the full-time channels on the XM and Sirius platforms. The merged company will have no editorial control over these channels.

Within Nine Months After Merger:

- The merged company must offer to sell an interoperable receiver in the retail after-market that will receive both the XM and Sirius services.

Finally, Sirius and XM may not originate local programming or advertising through their local repeater network, or enter into any agreement that would bar terrestrial radio stations from broadcasting live local sporting events.

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If you have any questions concerning the merger, please contact an attorney in our office at (202) 429-8970.

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This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact an attorney in our office.