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2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

June 13, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
United States Department of Justice
Washington, D.C. 20530

The Honorable Kevin J. Martin
Chairman, Federal Communications
Commission
Washington, D.C. 20554

Dear Attorney General Gonzales and Chairman Martin:

We are writing today seeking some information about the proposed merger of XM satellite radio and Sirius satellite radio. Your respective agencies are best positioned and have the resources to adequately analyze the impact of this proposed merger. While the Department of Justice and the Federal Communications Commission are responsible for approving the merger, we would appreciate your consideration of the many questions presented in this letter.

When the FCC approved the licenses for XM and Sirius to provide satellite radio, it issued a Service Order to establish the rules that would govern the service. In the Order, the FCC said that "there should be more than one satellite DARS license awarded. Licensing at least two service providers will help ensure that subscription rates are competitive as well as provide for a diversity of programming voices. The two DARS licensees will compete against each other for satellite DARS customers and will face additional competitive pressure from the other aural delivery media mentioned above. Accordingly, eligible auction participants may acquire only one of the two licenses being auctioned." Please explain the basis for the earlier Order and whether circumstances today are similar or different.

A key question to the antitrust analysis is how to determine the relevant market. At the hearing the Antitrust Task Force held on February 28, 2007 on the merger, some witnesses said the market should include local broadcasters and some claimed the markets for local radio and satellite radio were different because local broadcasters are licensed for specific geographic areas while satellite radio providers have a national service footprint. Please explain what evidence the agency looks for when defining a

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“relevant” market as part of its antitrust scrutiny.


In its 2002 EchoStar/DirecTV order, the Commission found that the proposed EchoStar/DirecTV merger was inconsistent with the Commission’s long-standing policy of not permitting one entity to control all of the spectrum for a particular service. Please explain how approval of this merger would be consistent or inconsistent with the finding in the Echostar DirecTV order.

Given that XM and Sirius will keep both licenses for satellite radio service as part of the merger, please describe the market conditions that would allow a competitor to effectively enter the satellite radio market.

I appreciate your attention to the important issues I have laid out in this letter. Please contact Stacey Dansky, Committee on the Judiciary at (202) 225-3951, or Kim Betz, Office of Congressman Chabot at (202) 225-2216 by June 27, 2007.

Sincerely,


JOHN CONYERS, JR.
Chairman, Committee on the Judiciary


STEVE CHABOT
Ranking Member, Judiciary Antitrust
Taskforce