

DUPLICATE

BEFORE THE  
**Federal Communications Commission**

In the Matter of

Sirius Satellite Radio, Inc. and  
XM Satellite Radio Holdings, Inc.  
for Transfer of Control of the FCC  
Authorizations and Licenses

) **Satellite Space Stations**  
) SAT-T/C-20070320-00054  
)  
) SAT-T/C-20070320-00053  
)  
) **Satellite Earth Stations**  
) SES-T/C-20070320-00380  
)  
) SES-T/C-20070320-00379  
)  
) MB Docket No. 07-57

**To: Office of the Secretary  
Federal Communications Commission**

FILED/ACCEPTED  
MAR 24 2008  
Federal Communications Commission  
Office of the Secretary

**SUPPLEMENT TO PETITION TO DENY**

Mt. Wilson FM Broadcasters, Inc., licensee of radio stations KKGO(FM), Los Angeles, California; KMZT(AM), Beverly Hills, California and FM translator station K288CS, Kawaihae, Hawaii ("Mt. Wilson") timely filed a Petition to Deny the above-referenced Sirius/XM transfer of control applications. On March 12, 2008, Clear Channel Communications, Inc. ("Clear Channel") filed a "Notice of Ex Parte Presentation ("Notice") in MB Docket No. 07-57. Mt. Wilson hereby in part supports the Clear Channel position.

Clear Channel opposes the grant of the pending transfer applications and/or in the event that the Commission is disposed to grant the applications, proposes that conditions be imposed as set forth in Appendix 3 to the Clear Channel Notice. Specifically, with

respect to Condition 1, Clear Channel proposes that at least 50% of the satellite capacity should be set aside for third parties. While Mt. Wilson strongly endorses the concept of setting aside 50% of the spectrum (or at least that portion of the spectrum controlled by Sirius or XM – but not the totality of both parties), Mt. Wilson submits that the 50% “set aside” should be further conditioned by limiting the acquisition to a party which has no attributable interest in terrestrial radio. In support of its position, the Clear Channel “Notice” devotes considerable argument to the adverse economic impact (competition/anticompetitive) on local free, over-the-air broadcast radio. However, if the 50% “set aside” (or any portion thereof) is acquired by a terrestrial broadcaster and such acquisition equates to an attributable interest (as that term is defined by the Commission rules), such interest would be essentially identical to the threat posed by the merger or as Clear Channel states “. . . concentrated in the control of one essentially unregulated entity. . . creating a genuine threat to the economic framework of broadcast radio.”<sup>1</sup>

Mt. Wilson also strongly endorses Condition 3 requiring the merged applicants to adhere to the Commission’s indecency rules. The proposed “Condition” if accepted can

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<sup>1</sup> Clear Channel March 12, 2008 “Notice” second paragraph. The difference between “regulated” or “unregulated” at the Commission level is irrelevant. The FCC test for establishing alleged anticompetitive conduct (applicable to a “regulated” broadcast station) mandates that FCC evaluation of such activity must be preceded by an “. . . adjudicated violation of either anticompetitive or antitrust laws. In Re Existing Stockholder of Clear Channel Communications, Inc., Memorandum Opinion and Order, FCC 08-3, Para. 28 (2008). The fact that the Petitioner supplied affidavits and argued that the local Department of Justice office would not likely pursue “white collar” matters involving relatively small dollar amounts was of no consequence. The FCC test (to establish a prima facie case) requires an “adjudicated violation” as a prerequisite for FCC evaluation – which pragmatically negates any difference between a “regulated” or “unregulated” entity.

be fairly characterized as a voluntary act, not a Commission rule, thereby avoiding the issue of FCC authority.<sup>2</sup>

Respectfully submitted

MT. WILSON FM BROADCASTERS, INC.

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Dated: March 24, 2008

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<sup>2</sup> As the Commission is aware, satellite radio broadcasts have indeed been received on standard automobile radios. Arguably, the indecency rules could and should be enforced in the event that (for whatever reason) indecent programming originated by a satellite service is aired on spectrum reserved for the traditional free over-the-air terrestrial broadcasters.

**CERTIFICATE OF SERVICE**

I, Brenda Chapman, hereby certify that on this 24<sup>th</sup> day of March, 2008, a copy of the foregoing "Supplement to Petition to Deny" was delivered via first class, U.S. mail, postage prepaid or via hand delivery where indicated to the following:

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**\*\* VIA HAND DELIVERY**