



**Mosaic Communications Partners, LLC**  
**2919 17<sup>th</sup> Avenue, Suite 205**  
**Longmont, CO 80503**

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October 7, 2008

By Electronic Filing

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-B204  
Washington, DC 20554

Re: Written Ex Parte Presentation  
MB Docket No. 07-57

Dear Ms. Dortch:

On behalf of Mosaic Communications Partners, LLC (“Mosaic”), I am writing with regard to the administration of the voluntary commitment of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. (the “Companies”) to enter into long-term leases or other agreements to provide a “Qualified Entity or Entities” rights to 4 percent of the full-time audio channels on each of the now-merged party’s platforms.<sup>1</sup> In the *Merger Order*, the Commission indicates that it will determine the implementation details for use of these channels at a later date. See *Merger Order* at ¶ 135. The deadline for fulfillment of this condition subsequent to the merger of the Companies is November 28, 2008, which is four months after the date on which the merger of the Companies was consummated.

Whether the implementation details to which the Commission refers are administered by the Commission or by an independent third party, it is imperative that they are established and applied in a transparent process that is open to the public and that provides adequate time for applicants to respond. This opportunity comes in the wake of the announcement of two separate Commission initiatives. First, the Commission has made plain its desire to promote diversity in the broadcasting context<sup>2</sup>, an effort that we squarely endorse.

Second, the Commission has been actively working to “enhance[] the openness and transparency of the Commission’s processes and deliberations.”<sup>3</sup> In response to a request from Congress last

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<sup>1</sup> See *Application for Consent to the Transfer of Control of Licenses – XM Satellite Radio Holdings, Inc. to Sirius Satellite Radio Inc., Memorandum Opinion and Order and Report and Order*, FCC 08-178, ¶ 134 (rel. Aug. 5, 2008) (“*Merger Order*”).

<sup>2</sup> See *Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 5922 (2008).

<sup>3</sup> *Public to be Given Three Weeks Notice of Open Meeting Agenda Topics, News Release*, at 1 (rel. Apr. 24, 2008). See also *FCC Publishes List of Items on Circulation, News Release*, at 1 (rel. Dec. 4, 2007).

year, Chairman Martin explained that “the Commission should conduct its affairs fairly, openly and transparently to serve the public interest.” Letter from Kevin J. Martin, Chairman, Federal Communications Commission, to the Honorable John Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, at 1 (Dec. 4, 2007).

It would be contrary to the Commission’s goals of promoting diversity in the broadcasting context and the openness and transparency of the Commission’s processes if the implementation details of the XM-Sirius commitment are developed or applied in a non-public, non-transparent way. The access to media platforms represented by this commitment will contribute to the diversity of voices available to radio listeners. At this critical juncture, the Commission must see that the requirements to be a “Qualified Entity” are clear and publicly-known and that all who meet those requirements have a fair and equal chance to gain access to the spectrum rights at issue.

While we applaud this Qualified Entity initiative, we also believe that the Commission must safeguard the economic viability of the Qualified Entities that in fact become lessees. As a result, the Commission must ensure that a Qualified Entity may enter into a lease or leases for up to 6 channels. This will ensure sufficient scale to generate interest from capital sources and programming sponsors while also amortizing operating costs. Absent special circumstances, an operator with access to a single channel or two channels likely would not be able to compete in an increasingly consolidated media marketplace. Likewise, to provide operating certainty, the term of the lease or leases should be co-existent with the term of the satellite spectrum licenses held by the Companies.

In addition, as part of the process of selecting Qualified Entity lessees, the Commission or the entity that will administer the selection process should take into account factors such as (i) the applicant’s previous radio and television management and investment history; (ii) the applicant’s financial capability; (iii) diversity of ownership within the applicant’s ownership group; and (iv) the applicant’s programming goals. Assessing these factors in the selection process will help to ensure the viability of selected parties and ensure that the Qualified Entity initiative will actually translate into the expansion of diversity of ownership and programming.

Importantly, the rules for selecting Qualified Entity lessee should provide that only social and economically disadvantaged businesses (“SDBs”), as defined by the United States Small Business Administration (“SBA”), may become lessees. By limiting the grant of leases to SDBs, the Commission will ensure greater diversity of ownership instead of concentrating ownership in the hands of existing large operators. In order to expand the ownership pool, entities whose ownership consists of multiple owners who individually qualify as Qualified Entities should also be considered Qualified Entities.

Finally, we are concerned that, due to the Commissions’ role in the implementation process, the initiative may be subject to legal attack because many of the categories within the definition of Qualified Entity are based on race. While we believe the definition should remain intact, we believe that applicants should be required to address their assessment and proposed resolution of this matter, if any, as part of the selection process.

We look forward to the Commission moving forward on this initiative expeditiously and putting into place rules that will create viable lessees that will further the goal of greater ownership diversity in the media marketplace.

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Marlene H. Dortch  
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One copy of this written presentation is being submitted electronically pursuant to Section 1.1206(b)(1) of the Commission's Rules.

Sincerely,

*/s/ Steve C. Hillard*

Steve C. Hillard

cc: The Honorable Kevin J. Martin  
The Honorable Michael J. Copps  
The Honorable Jonathan S. Adelstein  
The Honorable Deborah Taylor Tate  
The Honorable Robert M. McDowell