

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Applications for Consent to the)	MB Docket No. 07-57
Transfer of Control of Licenses)	
)	
XM Satellite Radio Holdings Inc.,)	
Transferor)	
)	
To)	
)	
Sirius Satellite Radio Inc.,)	
Transferee)	

To: The Commission, Office of the Secretary
Attn: Chief, Media Bureau

REPLY COMMENTS OF RADIO ONE, INC.

Radio One, Inc. (“Radio One”) submits these comments in support of the Petition for Reconsideration or Clarification by the Minority Media and Telecommunications Council (“MMTC”)¹ filed in response to the Commission’s October 19, 2010 Supplemental Merger Order.² In that Supplemental Merger Order, the Commission had adopted the implementation details for the voluntary commitment made by Sirius Satellite Radio Inc. (“Sirius”) and XM Satellite Radio Holdings Inc. (“XM”) to lease a portion of their combined channel capacity to certain “Qualified Entities” as a condition to the merger of the two satellite broadcasters (hereinafter, “Sirius XM”) on July 28, 2008

¹ MMTC Petition for Reconsideration or Clarification (filed Nov. 18, 2010) (“MMTC Petition”).

² See *Applications for Consent to the Transfer of Control of Licenses from XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order, 2010 FCC LEXIS 6258, FCC 10-184 (rel. October 19, 2010) (“*Supplemental Merger Order*”).

("Leasing Condition"). In particular, Radio One agrees with the recommendation made by MMTC to clarify the definition of "Qualified Entity," which was revised in the Supplemental Merger Order to disqualify from eligibility all entities that had any programming "relationships" with Sirius XM during the last two years.³ Radio One agrees with MMTC that this disqualification criterion is "vague and ambiguous," because it fails to consider limited "relationships" between Sirius XM and clearly independent programmers. More importantly, such a criterion does not promote, and as applied to Radio One, it will prevent, the more important mission of increasing program diversity within the satellite broadcast industry that is the basis of the Leasing Condition.⁴ Thus, it is in the public interest for the Commission to grant the relief requested by the MMTC Petition.

I. INTRODUCTION AND SUMMARY

Radio One is an African-American majority-controlled broadcast media company that owns and operates fifty-two terrestrial radio stations in sixteen U.S. markets that are primarily targeted to urban listening audiences. For thirty years, Radio One has demonstrated its commitment to serving the African-American audience, and has embodied the spirit of diverse programming mandated by these proceedings.

The Commission's objective to promote diverse new entrants in the satellite broadcast industry should not be viewed as mutually exclusive with also permitting and furthering access to "those that have enjoyed partial success"⁵ to date. For this reason, the definition of "Qualified Entity" should be clarified to allow eligibility for programmers that have had only limited or nominal relationships with Sirius XM, such as those resulting from a programming barter or swap.

³ Supplemental Merger Order, 2010 FCC LEXIS 6258, 6263, FCC 10-184, p. 5 ¶ 10.

⁴ MMTC Petition at 4.

⁵ *Id.*

II. THE COMMISSION SHOULD CLARIFY ITS “QUALIFIED ENTITY” DEFINITION

In the Merger Order, a “Qualified Entity” was originally defined as any entity that is majority-owned by persons who are African-American, not of Hispanic origin; Asian or Pacific Islanders; American Indians or Alaskan Natives; or Hispanics.⁶ In addition to implementing a new race-neutral definition for “Qualified Entity”, the Supplemental Merger Order proposes additional limitations to this classification to “encourage new entry” by programmers not already carried on the Sirius XM platform.⁷ As shared by Radio One in prior comments and during ex parte communications over the course of these proceedings,⁸ we believe that it also is critical that a Qualified Entity possess sufficient financial capability to provide the proposed services, as well as the resources to offer programming consistent with broadcast industry standards and any applicable laws.⁹ That an entity may have had limited prior interaction with Sirius XM should not, on its face, act as an absolute disqualification from the lease channel set-aside process.

Accordingly, Radio One concurs with the revision proposed in the MMTC Petition, i.e., to provide that “a party will not be disqualified if it has supplied

⁶ *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd 12348, 12408, ¶ 131 (2008) (“*Merger Order*”). *Id.* at 12409, ¶ 134 n.437.

⁷ These requirements include that a lessee: “(1) not be directly or indirectly owned, in whole or in part, by Sirius XM or any affiliate of Sirius XM; (2) not share any common officers, directors, or employees with Sirius XM or any affiliate of Sirius XM; and (3) *not have any existing relationships with Sirius XM for the supply of programming during the two years prior to the adoption date of this Order*” (emphasis added). Supplemental Merger Order at 5.

⁸ *See e.g.*, Comments of Radio One, Inc. at 3 (filed Mar. 30, 2009) (arguing that it is critical that lessees have the resources to maintain the program service throughout the lease term); Letter from Linda J. Vilardo, Vice President and Chief Administrative Officer, Radio One, Inc., to Marlene H. Dortch, Secretary, FCC (Aug. 25, 2009) (addressing the resources necessary for any entity to operate successfully the channels that Sirius XM propose to lease); and Letter from Barry A. Friedman, Partner, Thompson Hine LLP (on behalf of Radio One), to Marlene H. Dortch, Secretary, FCC (Sep. 27, 2010).

⁹ Similarly, the Commission agreed with Radio One that applicants “should be willing and able to indemnify Sirius XM from any liability arising from lapses in compliance, including without limitation, claims relating to the applicants’ programming content.” Supplemental Merger Order at 18; *See* Radio One Comments at 2.

programming to Sirius XM, but: (1) the party did not supply a majority of the programming heard on the designated Sirius or XM channel; (2) the party did not have its brand associated with the designated Sirius or XM channel; or (3) the party derived nominal or no net revenue (e.g., due to a programming swap) from Sirius or XM from supplying the programming.”¹⁰

The current definition, as set forth in the Supplemental Merger Order, is unreasonably restrictive and not in the best interest of the Commission’s goal to promote diversity within the satellite broadcast community.

III. CONCLUSION

Radio One respectfully submits the above Reply Comments in the Matter of Applications for Consent to the Transfer of Control of License, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee. Radio One believes that the clarification of the definition of “Qualified Entity” would be in the best interest of the Commission’s overall goal of programming diversity, as implemented by Sirius XM’s Leasing Condition according to the guidelines outlined in the Supplemental Merger Order.

¹⁰ MMTC Petition at 5.

Respectfully submitted,

By: 
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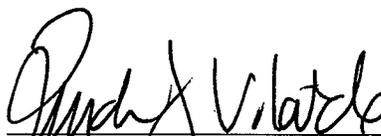
November 29, 2010

CERTIFICATE OF SERVICE

I, Linda J. Vilardo, Chief Administrative Officer and Vice President of Radio One, Inc., certify that on this 29th day of November 2010, I caused a true and correct copy of the foregoing Reply Comments of Radio One, Inc. in the Matter of Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, to be served by electronic mail and U.S. mail to:

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