

Chemicals, Foods, Pesticides and pests, Public health.

Dated: September 3, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

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FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 08-172; FCC 08-196]

Development of Devices Capable of Supporting Multiple Audio Entertainment Services

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission adopted a *Memorandum Opinion and Order and Report and Order*, FCC 08-178 (“*Merger Order*”), approving the transfer of various licenses and authorizations from XM Satellite Radio Holdings Inc. to Sirius Satellite Radio Inc., both licensees of Satellite Digital Audio Radio Service (“SDARS”) systems in the United States. In the *Merger Order*, the Commission committed to initiate a Notice of Inquiry (“NOI”) within 30 days of adoption of the *Merger Order* on the issues of requiring devices capable of receiving SDARS to include digital audio broadcast (“DAB”), or HD Radio™, or any other technologies capable of providing audio entertainment services; and requiring devices capable of receiving HD Radio to include SDARS or any other technologies capable of providing audio entertainment services. With this proceeding, we initiate this NOI.

DATES: Comments for this proceeding are due on or before November 10, 2008; reply comments are due on or before December 9, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 08-172, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail:* FCC504@fcc.gov or *phone:* 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information

on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Rosalee Chiara, Rosalee.Chiara@fcc.gov, or Brendan Murray, Brendan.Murray@fcc.gov, both of the Policy Division, Media Bureau, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Inquiry in MB Docket No. 08-172, FCC 08-196, adopted August 22, 2008, and released August 25, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Summary of the Notice of Inquiry

I. Introduction

1. On July 25, 2008, the Commission adopted a *Memorandum Opinion and Order and Report and Order*, FCC 08-178 (“*Merger Order*”), approving the transfer of various licenses and authorizations from XM Satellite Radio Holdings Inc. (“XM”) to Sirius Satellite Radio Inc. (“Sirius”), both licensees of Satellite Digital Audio Radio Service (“SDARS”) systems in the United States. In the *Merger Order*, the Commission committed to initiate a Notice of Inquiry (“NOI”) within 30 days of adoption of the *Merger Order* on the issues of (i) requiring devices capable of receiving SDARS to include digital audio broadcast (“DAB”), or HD Radio™, or any other technologies capable of providing audio entertainment services; and (ii) requiring devices capable of receiving HD Radio to include SDARS or any other technologies capable of providing audio entertainment services. With this proceeding, we initiate this NOI.

II. Background

2. *HD Radio.* The Commission first considered the feasibility of terrestrial and satellite digital radio services in 1990. With respect to terrestrial digital radio, the Commission concluded that the available systems were undeveloped and that it was premature to engage in discussions regarding standards, testing, licensing, and other policy issues. In 1999, the Commission recognized new technological developments and innovations and commenced the DAB proceeding to begin the process of adopting a DAB system. In the *DAB NPRM*, the Commission proposed criteria for the evaluation of DAB models and systems and considered certain DAB system testing, evaluation, and standard selection issues. In October 2002, the Commission selected iBiquity's IBOC HD Radio technology as the sole digital technology for the terrestrial radio broadcast service. IBOC technology makes use of the existing AM and FM bands (in-band) by adding digital carriers to a radio station's analog signal, thereby allowing broadcasters to transmit digitally on their existing channel assignments (on-channel) while simultaneously maintaining their analog service. The Commission concluded that adoption of a single IBOC transmission standard would benefit the radio broadcast industry, and solicited industry assistance in developing a formal standard. In 2007, the Commission released the *Second DAB Report and Order*, adopting service rules, programming and operational rules, and technical rules. In the *Second DAB Report and Order*, the Commission refrained from imposing a mandatory conversion schedule for radio stations to commence digital broadcast operations, but many radio stations have begun digital transmissions on a voluntarily basis.

3. *SDARS.* SDARS was established by the Commission in 1997 and, after an auction, licenses were granted to two entities, Sirius and XM. In establishing SDARS, the Commission explained that the new service would provide “continuous nationwide radio programming with compact disc (CD) quality sound” and would “increase the variety of programming available to the listening public.” XM commenced service in September 2001, and Sirius began service in February 2002. In 2007, Sirius and XM requested Commission approval to merge. The Commission adopted a decision on July 25, 2008 approving the merger subject to conditions. The companies publicly reported on July 29, 2008 that they completed the transaction and the

newly combined company now operates under the name Sirius XM Radio, Inc. ("Sirius XM").

4. *Equipment Open Access Commitment.* In the Sirius-XM merger proceeding, some commenters urged the Commission to require the combined SDARS company to provide open access to the technical specifications of its devices and network to enable any receiver manufacturer to develop SDARS receivers. Some commenters also urged the Commission to require the combined SDARS company to direct manufacturers to include HD Radio technology in all SDARS receivers containing analog AM or FM radio technology. To address these issues, the Commission approved the merger subject to conditions, based on voluntary commitments made by Sirius XM, that require the merged entity to (i) permit any device manufacturer to develop equipment that can deliver the combined company's satellite radio service; (ii) not prevent such devices from reaching consumers through exclusive contracts or otherwise; and (iii) provide, on commercially reasonable terms, the intellectual property to permit any device manufacturer to develop equipment that can deliver the merged entity's satellite radio service. Moreover, in response to issues raised regarding the incorporation of other audio technologies in SDARS receivers, Sirius XM committed to allowing device manufacturers to incorporate in SDARS receivers any other technology that would not result in harmful interference with the merged entity's network, including HD Radio, iPod ports, Internet connectivity, and other technology. Based on these commitments, the Commission declined to adopt a merger condition that would mandate the incorporation of HD Radio technology in SDARS receivers. The Commission determined, however, that "important issues have been raised that warrant further examination." Accordingly, the Commission committed to initiate this NOI within 30 days of adoption of the *Merger Order*.

III. Discussion

5. Consistent with our commitment made in the *Merger Order*, we initiate this NOI regarding whether to require HD Radio or any other audio technologies to be incorporated into all SDARS receivers and/or whether to require SDARS or any other audio technologies to be incorporated into all HD Radio receivers. As an initial matter, we seek comment on the extent to which the market is already making multi-functional radio receivers

available to the public that include two or more of the following capabilities: SDARS, HD Radio, iPod/MP3, Internet, or any other technologies capable of providing audio entertainment services. How many of each type of multi-functional radio receivers are available today, including factory-installed receivers in automobiles and receivers later installed in vehicles in the so-called "aftermarket"? How many multi-functional radio receivers are expected to be available in the near future without a Commission requirement? To the extent that multi-functional radio receivers are not available today and are not expected to be available in the near term, is this because of a lack of consumer demand for such receivers or some other reason? How does any lack of multi-functional radio receivers impact competition among SDARS, HD Radio, iPod/MP3, Internet, or any other technologies capable of providing audio entertainment services?

A. Including HD Radio or Other Audio Technologies in SDARS Receivers

6. We seek comment on whether we should require all receivers and other devices capable of receiving SDARS signals to also contain chips and other technology necessary to support HD Radio or any other technologies capable of providing audio entertainment services. Would such a requirement promote competition among Sirius XM, HD Radio stations, and other audio technologies, thereby leading to lower prices for audio entertainment services and/or broader programming options for listeners? As discussed above, Sirius XM has committed in connection with its merger to allow any manufacturer to develop SDARS receivers that can deliver the combined entity's satellite radio service and to allow manufacturers to incorporate any technology that would not result in harmful interference with the SDARS network, including HD Radio technology. As a result of this commitment, can we expect a sufficient number of multi-functional radio receivers that include both HD Radio and SDARS reception capabilities to become available in the near term without a Commission requirement? In addition to increased competition, what other public interest benefits might result from the incorporation of HD Radio or other audio technologies in SDARS receivers? We note that the Commission's rules do not require SDARS operators to transmit state-level Emergency Alert System ("EAS") alerts. Would including HD Radio technology in SDARS receivers facilitate the dissemination of state-level and other

geographically targeted EAS alerts to SDARS subscribers?

7. We seek comment on the effect of any receiver requirements, or lack thereof, on the development of HD Radio. We also seek comment on the extent of consumer demand for HD Radio. What amount and type of programming is available on HD Radio today? What amount and type of programming is expected to be available on HD Radio in the next three years? To what extent are automobile manufacturers already incorporating HD Radios into new model vehicles? Does the HD Radio industry currently provide automobile manufacturers with incentives to include HD Radios in new model vehicles? What incentives would further facilitate the deployment of HD Radios in new model vehicles? Would a Commission rule requiring HD Radio technology to be incorporated into all SDARS receivers facilitate the development of HD Radio? We note that in establishing rules for SDARS in 1997, the Commission refrained from requiring SDARS receivers to be capable of receiving terrestrial broadcasting formats. We seek comment on whether we should reconsider this conclusion based on marketplace developments.

8. We seek comment on the impact of including HD Radio chips and technology in SDARS receivers on the cost of SDARS receivers. We seek comment on the cost impact on radio manufacturers, auto manufacturers and, ultimately, consumers. If the Commission were to require all SDARS receivers to also contain HD Radio chips and technology, would such a requirement result in higher volume purchases of HD Radio chips and technology and thereby lead to lower per-unit costs? To what extent is the cost of HD Radio chips and technology attributable to licensing fees for intellectual property (IP)? Would higher volume purchases of HD Radio chips and technology lead to lower IP licensing costs? Should the Commission require reduced royalty fees to iBiquity if we mandate the inclusion of an HD Radio chip? If so, does the Commission have the authority to do so? Would a mandate requiring the inclusion of HD Radio chips and technology in SDARS receivers reduce the incentive to improve the quality, develop innovations, and/or reduce the cost of HD Radio technology? We also seek comment on the impact on the cost of an SDARS receiver from including other technologies capable of providing audio entertainment services, such as iPod/MP3 and Internet capability.

9. We seek comment on what impact including an HD Radio chip and

technology in an SDARS receiver would have on the size, weight, battery life, and other parameters of an SDARS receiver. Would including HD Radio technology have a particularly significant impact on the size, weight, and battery life of any class of SDARS receivers, such as handheld receivers? Conversely, would including HD Radio technology have a relatively insignificant impact on the size, weight, and battery life of any class of SDARS receivers, such as receivers in automobiles? We also seek comment on the impact on the size, weight, battery life, and other parameters of an SDARS receiver from including other technologies capable of providing audio entertainment services, such as iPod/MP3 and Internet capability.

10. We seek comment on whether including HD Radio technology or other audio technologies in SDARS receivers would have any impact on the performance of the SDARS receivers. Would inclusion of HD Radio or other audio technologies have any adverse impact on the receiver's ability to receive SDARS signals?

11. If the Commission were to require SDARS receivers to include HD Radio or other audio technologies, what timeframe would be appropriate for compliance with this requirement? Should we establish a different timeframe for Original Equipment Manufactured ("OEM") automobile receivers to account for procurement cycles for the automobile industry? Should we require Sirius XM to certify compliance with any rules we adopt? Should we adopt any additional requirements to aid the Commission in enforcing any rules we adopt?

12. Would a Commission rule requiring the incorporation of HD Radio or other audio technologies into SDARS receivers limit consumer choice in the selection of SDARS receivers? Should we allow some SDARS-only receivers? If we were to establish a class of permissible SDARS-only receivers, how would this impact competition among SDARS, HD Radio, iPod/MP3, Internet, or any other technologies capable of providing audio entertainment services? As suggested by iBiquity, should we require HD Radio chips and technology to be included only in SDARS receivers that include the ability to receive terrestrial analog AM/FM signals and which provide the user with the same tuning apparatus or display for both satellite and analog AM/FM radio? Would inclusion of HD Radio technology in these receivers impact the ability of a receiver to receive analog AM/FM reception?

13. We seek comment on whether the open access merger commitment affects the need for Commission action. We also seek comment on any other issues appropriate to our inquiry regarding whether to require HD Radio or any other technologies capable of providing audio entertainment services to be incorporated into SDARS receivers.

B. Including SDARS or Other Audio Technologies in HD Radio Receivers

14. We seek comment on whether we should require all receivers and other devices capable of receiving HD Radio signals to also contain chips and other technology necessary to support SDARS or any other technologies capable of providing audio entertainment services. Would such a requirement promote competition among HD Radio stations, Sirius XM, and other audio technologies, thereby leading to lower prices for audio entertainment services and/or broader programming options for listeners? In addition to increased competition, what other public interest benefits might result from the incorporation of SDARS or other audio technologies in HD Radio receivers? We note, for example, that there may be areas where there is no terrestrial communications infrastructure, including during times of disaster. Would including SDARS technology in HD Radio receivers promote the dissemination of emergency information in these areas?

15. We seek comment on the impact of including SDARS chips and technology in HD Radio receivers on the cost of HD Radio receivers. We seek comment on the cost impact on radio manufacturers, auto manufacturers and, ultimately, consumers. Does the SDARS technology afford adequate controls to enable Sirius XM to control access to its subscription services if SDARS chips and technology are included in all HD Radio receivers? If the Commission were to require all HD Radio receivers to also contain SDARS chips and technology, to what extent would this result in higher volume purchases of SDARS chips and technology and thereby lead to lower per-unit costs? To what extent is the cost of SDARS chips and technology attributable to IP licensing fees? Would higher volume purchases of SDARS chips and technology lead to lower IP licensing costs? Would a mandate requiring the inclusion of SDARS chips and technology in HD Radio receivers reduce the incentive to improve the quality, develop innovations, and/or reduce the cost of SDARS technology? We also seek comment on the impact on the cost of an HD Radio receiver from including other technologies capable of

providing audio entertainment services, such as iPod/MP3 and Internet capability.

16. We seek comment on what impact including an SDARS chip and technology in an HD Radio receiver would have on the size, weight, battery life, and other parameters of an HD Radio receiver. Would including SDARS technology have a particularly significant impact on the size, weight, and battery life of any class of HD Radio receivers, such as handheld receivers? In particular, we seek comment on the size of the antenna needed to receive SDARS satellite signals. How would this antenna size impact the size of an HD Radio? To what extent has HD Radio technology been incorporated into mobile phones? If all devices capable of receiving HD Radio signals must also include SDARS technology, how would that impact the incentives of equipment manufacturers to include HD Radio technology in mobile phones? Would including SDARS technology have a relatively insignificant impact on the size, weight, and battery life of any class of HD Radio receivers, such as receivers in automobiles? We also seek comment on the impact on the size, weight, battery life, and other parameters of an HD Radio receiver from including other technologies capable of providing audio entertainment services, such as iPod/MP3 and Internet capability.

17. We seek comment on whether including SDARS technology or other audio technologies in HD Radio receivers would have any impact on the performance of the HD Radio receiver. Would inclusion of SDARS or other audio technologies have any adverse impact on the receiver's ability to receive HD Radio signals?

18. If the Commission were to require HD Radio receivers to include SDARS or other audio technologies, what timeframe would be appropriate for compliance with this requirement? Should we establish a different timeframe for OEM automobile receivers to account for procurement cycles for the automobile industry? What steps could we take to certify compliance with any rules? Should we adopt additional requirements to aid in enforcing any rules we adopt?

19. Would a Commission rule requiring SDARS or other audio technologies to be incorporated into HD Radio receivers limit consumer choice in the selection of HD Radio receivers? Should we allow some receivers to be capable of receiving HD Radio but not SDARS or other audio technologies? If we were to establish a class of such receivers, how would that impact competition among HD Radio, SDARS,

iPod/MP3, Internet, or any other technologies capable of providing audio entertainment services?

20. We seek comment on any other issues appropriate to our inquiry regarding whether to require SDARS or any other technologies capable of providing audio entertainment services to be incorporated into HD Radio receivers.

IV. Statutory Authority

21. We seek comment on whether the Commission has the jurisdiction to mandate the inclusion of HD Radio, SDARS, or any other audio technology in receivers. Do we have express or ancillary statutory authority to require receiver manufacturers to include certain technology in receivers? To the extent that the Commission does not have the authority to require receiver manufacturers to include certain technology in receivers, do we have authority to require iBiquity, licensees of HD Radio stations, Sirius XM, and/or other entities to certify that receivers authorized to receive content include certain mandated technology? Would such a requirement be technologically feasible, particularly in the case of a non-subscription service such as HD Radio?

V. Procedural Matters

A. Ex Parte Presentations

22. This is an exempt proceeding in which ex parte presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

B. Comment Filing Procedures

23. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the

caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

24. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

25. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

26. *Additional Information.* For additional information on this proceeding, contact Rosalee Chiara, Rosalee.Chiara@fcc.gov, or Brendan Murray, Brendan.Murray@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

VI. Ordering Clauses

Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 4(i) & (j), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C sections 151, 154(i) & (j), 303(r), and 403, that this *Notice of Inquiry is adopted*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8-20992 Filed 9-9-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

[Notice 2008-10]

Filing Dates for the Ohio Special Election in the 11th Congressional District

AGENCY: Federal Election Commission.
ACTION: Notice of filing dates for special election.

SUMMARY: Ohio has scheduled elections on October 14, 2008, and November 18, 2008, to fill the U.S. House of Representatives seat in the Eleventh Congressional District held by the late Representative Stephanie Tubbs Jones.

Committees required to file reports in connection with the Special Primary Election on October 14, 2008, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on November 18, 2008, shall file a 12-day Pre-Primary Report, a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; *Telephone:* (202) 694-1100; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Ohio Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on October 2, 2008; a 12-day Pre-General Report on November 6, 2008; and a 30-day Post-General Report on December 18, 2008. (See chart below for the closing date for each report).