Satellite Radio Firms Plan To Merge
XM, Sirius Face Antitrust Hurdles

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Tuesday, February 20, 2007; A01

XM and Sirius, the two satellite radio companies that have spent millions of dollars trying to woo pay-for-service customers, yesterday announced plans to merge in hopes of stemming losses and offering an even larger smorgasbord of music, talk and sports.

If approved by federal regulators, the merger would give all satellite subscribers access to Sirius's Howard Stern, pro football games and NASCAR races, as well as XM's Oprah Winfrey, Major League Baseball and Bob Dylan.

Before XM Satellite Radio Holdings of the District and Sirius Satellite Radio of New York can combine, however, the companies must persuade the Justice Department and Federal Communications Commission that they are complying with antitrust laws, a claim that land-based broadcasters and consumer groups are likely to dispute. XM and Sirius contend that customers have ample audio choices through devices such as iPods and cellphones.

The FCC bars a single company from controlling the satellite radio market, but FCC Chairman Kevin J. Martin recently noted that such rules can be changed. Martin said yesterday that the hurdle "would be high. . . . The companies would need to demonstrate that consumers would clearly be better off with both more choice and affordable prices."

Officials said the new company's name and headquarters would be determined later. Customers, who now pay $12.95 per month for each company's service, would be able to choose a cafeteria-style range of channels.

"In fact, it will become a company with greater consumer choice," said Gary M. Parsons, chairman of XM. "Certainly, two companies combined would be a much stronger programming lineup."

The merger would be a milestone in the evolution of commercial radio. XM and Sirius, founded in the early 1990s, predicted that enough people would be willing to pay for a wide array of radio choices -- with clear reception, no fundraising appeals and commercial-free music stations -- to allow the providers to turn a profit.

But their bidding war for on-air talent escalated dramatically. Sirius spent $500 million over five years to employ Stern, who earned another $300 million in stock for meeting certain subscriber goals. XM signed Winfrey to a three-year, $55 million contract. Both companies have spent millions of dollars on professional sports deals.
Sirius has reported losses of $3.4 billion over five years. In mid-2006, XM reported a quarterly loss of $231 million, but the company said it had a positive cash flow by the year's end.

Both firms' stocks have experienced a bumpy ride over the past several years. Shares of XM, which number more than 300 million, soared to nearly $40 in 2005 but closed Friday at $13.98 per share. Sirius, which has more than 1.4 billion shares, reached nearly $9 at its peak in 2005. Sirius shares closed Friday at $3.70 per share.

In a joint statement, Sirius and XM executives called the proposed deal an "all-stock merger of equals" with a combined "enterprise value" of about $13 billion. The figure is their estimation of the combined operation's worth, including net debt of about $1.6 billion.

XM shareholders would receive 4.6 shares of Sirius common stock for each XM share they own. Mel Karmazin, chief executive of Sirius, would become the new company's chief executive. Parsons, chairman of XM, would become chairman of the merged company. The new company's 12-member board of directors would include Karmazin, Parsons and four independent members designated by each company. General Motors and American Honda, which include satellite radio as a standard feature in many new cars, would each provide one board member.

"We believe the standard for approving the deal is whether this is in the public interest," Karmazin said in a conference call with reporters. "We believe there is tremendous benefit that accrues to the public."

Officials said they hope to complete the merger, which was approved by the boards of both companies, by the end of the year.

XM and Sirius face emerging competition from the conversion of AM and FM stations to digital broadcast signals. Traditional analog AM and FM broadcasts provide only one channel per frequency and limited sound quality. In the past few years, however, most AM and FM stations have converted to digital signals, which improves sound quality and gives them the ability to broadcast "side channels" in addition to their main frequencies.

The proposed merger also faces significant regulatory and technological hurdles. The most recent merger attempt comparable to the XM-Sirius proposal came in 2002, when the satellite TV companies Echostar Communications and DirecTV tried to merge. The two companies told the FCC and the Justice Department that they needed to combine resources and expand programming to compete against what they called the "monopoly" of cable-TV providers. They promised more channel choices and the rollout of high-speed Internet access via satellite. The FCC and Justice Department rejected the merger, calling it a clear-cut "two-to-one" deal that would probably result in higher prices for satellite-TV subscribers.

William Baer, an antitrust lawyer at Arnold & Porter, said regulators would give the proposed merger a close look. "It comes down to price competition," Baer said. "At the end of the day, they have to be able to show that the pricing of satellite radio is going to be constrained by these alternative forms of listening, such as standard radio, iPods, Internet radio and cellphones. The question that the Department of Justice will look at is whether satellite radio prices will go up if there is only one provider tomorrow."

Rebecca Arbogast, a telecom industry analyst for the brokerage firm Stifel Nicolaus, said XM and Sirius were smart to start the merger effort in time to complete it before Democrats have the chance to win the presidency -- and appoint top Justice Department and FCC officials. "If they waited until a Democratic
attorney general were in place, then it would be a much closer call," Arbogast said.

To help the proposed XM-Sirius merger at the FCC, Sirius has hired the communications law firm Wiley Rein of the District. Managing partner Richard E. Wiley is a former FCC chairman. Martin, the FCC chairman, is a former associate of the firm.

The proposed XM-Sirius merger will face opposition from the National Association of Broadcasters, the trade group of AM and FM radio stations, and local television stations, which has fought the satellite radio services on various fronts since their inception.

"Given the government's history of opposing monopolies in all forms, NAB would be shocked if federal regulators permitted a merger of XM and Sirius," NAB spokesman Dennis Wharton said in a statement. "In coming weeks, policymakers will have to weigh whether an industry that makes Howard Stern its poster child should be rewarded with a monopoly platform for offensive programming."

The NAB has fought XM's rollout of local traffic and weather channels, now in 21 areas, including the District and Baltimore. The NAB says the move violates the spirit of the FCC's intention to license a national satellite radio service. Radio stations in those areas fear losing advertising to XM, which airs commercials on its traffic and weather reports, unlike its music channels.

Gene Kimmelman of Consumers Union said his organization will "raise some antitrust concerns, forcing Justice to look at whether there's a unique satellite market that needs to be preserved with competition."

If the merger is approved, XM and Sirius must reconcile different forms of satellite technology. XM's two satellites are in low-angle, geo-stationary orbit in the Southern sky above the United States. Sirius's three satellites orbit in a figure-eight over North America. Because Sirius's satellites are directly overhead, their signals are less likely to be blocked by tall buildings, trees and mountain ridgelines to the south. However, because the Sirius satellites move in the sky throughout the day, Sirius customers with stationary units sometimes have to move their antennas from one side of the house to another. The problem is less pronounced for Sirius mobile units, such as in cars.

Both services augment their satellite feeds with hundreds of terrestrial "repeater" devices mounted on structures around the country that help broadcast the signal in high-density areas, such as cities.

Sirius struggled with management and technical problems and fell behind XM early on, then surged ahead by launching its first satellite in 2000. XM beat Sirius to rollout, launching its service in September 2001. Sirius made a limited rollout five months later. By the end of 2006, Sirius had 6 million subscribers to XM's 7.6 million.

XM subscriber John Goodman of Tuckahoe, N.Y., said he has several questions about how the deal will affect him.

"My biggest question is what happens to my XM receiver," Goodman said. "I have spent over $100 on my XM receiver so I can listen to the Red Sox games when I'm in the house or outside. How does all this impact me?"

Staff writer Frank Ahrens and staff researcher Karl Evanzz contributed to this report.