



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** THE COMMISSION  
STAFF DIRECTOR  
GENERAL COUNSEL  
CHIEF COMMUNICATIONS OFFICER  
FEC PRESS OFFICE  
FEC PUBLIC DISCLOSURE

**FROM:** COMMISSION SECRETARY *MWD*

**DATE:** OCTOBER 29, 2007

**SUBJECT:** COMMENT ON DRAFT AO 2007-20  
XM Satellite Radio, Inc.

Transmitted herewith is a timely submitted comment from John C. Keeney, Jr., on behalf of XM Satellite Radio, Inc. regarding the above-captioned matter.

Proposed Advisory Opinion 2007-20 is on the agenda for Tuesday, October 30, 2007.

Attachment

**HOGAN &  
HARTSON**

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COMMISSION  
SECRETARIAT

2007 OCT 29 A 11: 57

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October 29, 2007

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*VIA FACSIMILE (202-208-3333)*

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Re: Draft Advisory Opinion 2007-20 (XM Satellite Radio Inc.)

Dear Ms. Dove:

Thank you on behalf of XM Satellite Radio Inc. ("XM") for the expeditious consideration of our advisory opinion request. XM seeks potential clarification of what we believe is an unintentional inaccuracy in the paragraph beginning at line 18 of page 7 and ending on line 4 at page 8. It is simply inaccurate to state "that the communication was paid for by the candidate's authorized committee" in line 19 at page 7 or to disclaim in line 23 "(1) paid for by X for President". There is no payment to XM; that is the entire point of the XM proposal.

As the factual recitation in the draft Advisory Opinion correctly notes at page 2, there is no charge to the candidate by XM and nothing is paid to XM by the candidate's authorized committee. Therefore, the sentence in the draft and the proposed first sample disclaimer in line 23, "(1) paid for by X for President", misstate to the listening public one of the most important facts concerning the broadcast. There is no payment to XM, but the above-quoted sentence and the first sample disclaimer convey the opposite.

The draft opinion's preceding paragraph accurately describes that other costs (we add parenthetically "if any") for producing Candidate-Supplied Content will be paid for by the participating candidate's authorized committee. As XM explained, some Candidate-Supplied

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Content, such as live interviews, will have no costs; some content such as interviews recorded for later use will have the cost associated with the tape or email attachment transmitted to XM. In no circumstance is a payment made to XM for the communication itself.

XM greatly appreciates the Advisory Opinion's suggested safe-harbor guidance to candidates by pre-approved sample disclaimer language. But XM believes that each safe-harbor example must fairly and accurately describe the facts. In our view, example 1, which is boilerplate in most contexts, does not meet that test here, and should not be listed by the Commission as a preferred safe-harbor wording in an Advisory Opinion addressing specific facts in which the otherwise boilerplate language is inaccurate and misleading.

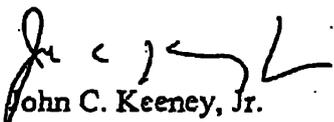
Therefore, XM specifically requests that the Commission:

- Delete the sentence at lines 18-19 of page 7,
- Move the citation from line 20 at page 7 to follow the sentence ending in line 17, and
- Delete in line 23 at page 7 the first example: (1) "paid for by X for President"; and renumber the remainder.

If the Commission were to choose to provide a more accurate disclaimer to substitute for the first, XM respectfully suggests the addition of (1) "furnished by X for President" or words to that effect which do not suggest payment to XM Radio and which are consistent with the sponsorship identification announcements the Federal Communications Commission requires that broadcast stations make in similar circumstances. See 47 CFR § 73.1212. Alternatively, a sample disclaimer "furnished by X for President at its cost, if any" would be acceptable.

Thank you.

Very truly yours,



John C. Keeney, Jr.  
on behalf of XM Satellite Radio Inc.