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April 27, 2007

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Notification of *Ex Parte* Communication**
**MB Docket No. 07-57**

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that on April 26, 2007, Andrew R. Etkind, General Counsel and Secretary of Garmin International, Inc. ("Garmin"), and I met with Commissioner Jonathan S. Adelstein; Barry Ohlson, Senior Legal Advisor, Legal Advisor for Spectrum and International Issues to the Commissioner; and Rudy Brioché, Legal Advisor for Media Issues to the Commissioner. In the meeting, Mr. Etkind reviewed the information on the attached handout, explaining Garmin's provision of real-time weather information to aviators through its GPS products based on its partnering with XM Satellite Radio Holdings Inc. ("XM"). Mr. Etkind expressed Garmin's interest in ensuring that this service remains available to the aviation community if and when a merger of XM and Sirius Satellite Radio Inc. is approved and closed.

As required by Section 1.1206(b), as modified by the policies applicable to electronic filings, one electronic copy of this letter is being submitted for the above-referenced docket.

Very truly yours,

M. Anne Swanson

Attachment
cc w/attach. (by email):
The Honorable Jonathan S. Adelstein
Barry Ohlson, Esquire
Rudy Brioché, Esquire

**FCC MUST CONDITION ANY APPROVAL OF THE XM-SIRIUS MERGER ON THE CONTINUED LONG-TERM PROVISION OF XM'S CURRENT AVIATION WEATHER PRODUCTS**

I. XM-EQUIPPED GPS AND AVIATION SYSTEMS PROVIDED BY GARMIN DELIVER SAFETY-RELATED INFORMATION THAT IS ESSENTIAL TO PILOTS

A. Garmin Overview – Garmin International, Inc. ("Garmin") is leading, worldwide provider of navigation, communications, and information devices, most of which are enabled by Global Positioning System ("GPS") technology. Garmin designs, develops, manufactures, and markets a diverse family of handheld, portable, and fixed-mount GPS-enabled products and other navigation, communications, and information products for automotive/mobile, outdoor/fitness, marine, and general aviation markets. In the aviation sector, Garmin serves general aviation aircraft owners and, in commercial aviation, air taxi operators, air ambulance operators, and cargo and charter companies.

B. Product Specifics

1. Beginning several years ago, Garmin partnered with XM Satellite Radio, Inc. to provide information on ground and aviation weather to general aviation pilots, by including the requisite XM receivers in Garmin's GPS and other aviation products.

2. In the last three years, Garmin has sold approximately 28,000 aviation products with the capability to receive and display XM weather products. Three quarters of these products are portable units; one fourth are installed in aircraft cockpits. The installed systems require a black box XM datalink receiver and antenna on the aircraft.

C. Product Development

1. Garmin alone spent some $3 million over a two-year period to develop and obtain the initial FAA aircraft certification for its current black box XM receiver. Garmin also spent roughly $1 million to develop the XM receiver and software used with the portable products.

2. Garmin sells these products to most of the leading general aviation aircraft manufacturers and has obtained FAA certification for their use on approximately 20 different new production aircraft. The cost of all these aircraft certifications was approximately $20 million, of which at least one-fourth was attributable to certifications related to the Garmin-XM relationship. Additional certifications are underway, each costing between half million to one million dollars.

D. Essential Safety Benefits

1. Prior to Garmin's teaming with XM, pilots in most general aviation aircraft had no source of real-time weather information while airborne other than voice reports from FAA sources via the radio.

2. At best, they could rely only on recorded voice weather reports from the FAA. A small percentage of aircraft are equipped with an active radio device that will show storm cell activity in the direction of flight. There are other devices available that will show the location of lightning strikes as an indication of thunderstorm activity.

3. The number of weather-related aircraft accidents is significant. According to the National Aeronautics and Space Administration, approximately one-third of all aviation accidents are attributed in part to adverse weather. *See* the NASA Weather Accident Prevention Project website at http://wxap.grc.nasa.gov/. National Transportation Safety Board reports of 17,511 aviation accidents between 1989 and 1997 cited weather conditions as primary or contributing factors in 22.5 percent of all accidents. *See* http://www.ofcm.gov/nawpc/pdf/chapt1.pdf. Causes include reduced visibility resulting from weather conditions, thunderstorms and lightning, sudden icing, and wind gusts.

4. Now, using Garmin's systems, aircraft pilots have real-time access to constantly-updated, high-resolution weather data for the U.S. right in the cockpit. Weather information includes Next Generation Radar (NEXRAD), Aviation Routine Weather Reports (METARs), Terminal Aerodrome Forecasts (TAFs), Temporary Flight Restrictions (TFRs), Lightning, winds aloft, echo tops, precipitation type, storm cell data, Airmen's Meteorological Information (AIRMETs), and Significant Meteorological Information (SIGMETs).

II. SIRIUS' ATTEMPTS TO DEVELOP AN AIRCRAFT WEATHER SERVICE ARE STILL UNMARKETED AND DEVELOPMENTAL, AND THE EQUIPMENT FROM ITS JOINT VENTURE WITH WSI IS IN NO WAY INTEROPERABLE WITH GARMIN/XM'S SYSTEMS

A. Current Lack of Any Significant Alternative to Garmin/XM – In February 2006, Sirius announced joint efforts with WSI, a satellite-based weather information system that had previously competed with XM. (*See* http://www.wsi.com/corporate/news/releases/usav020806_InflightSirius.asp.) Together, Sirius and WSI say they will develop and market products that will compete with Garmin/XM's service. To date, no jointly produced systems have even been sold or installed. WSI will need to obtain certification for these products. Initially, subscribers will employ WSI equipment that WSI says it is scheduled to start shipping this month. Those black boxes will need to be replaced with the model that Sirius and WSI eventually develop and certify.

B. Garmin/XM's and WSI/Sirius' Products Are Not Interoperable -- WSI's systems require the installation of a black box and antenna on aircraft that is highly unique and different from the XM service utilized in Garmin's products. The systems transmit on totally different satellite frequencies and formats. As far as Garmin is aware, there is not a portable WSI device.

C. XM and Sirius Have Disregarded the FCC's Mandates Requiring Interoperability in the General Consumer Market

1. FCC rules require that both XM Radio and Sirius ensure that each of their satellite DARS systems "includes a receiver that will permit end users to access all licensed satellite DARS systems that are operational or under construction." 47 C.F.R. § 25.144(a)(3)(ii).

2. In adopting DARS service rules in 1997, the FCC made clear that, while it was not mandating receiver standards, it was requiring such interoperability to "promote competition by reducing transaction costs and enhancing consumers' ability to switch between competing DARS providers." *Establishing Rules and Policies for the Digital Audio Radio Satellite Service*, 12 FCC Rcd 5754, 5786 (1997).

3. Both XM and Sirius certified 10 years ago that they would comply with the interoperability requirement, but neither has done so to date. The best they have offered are repeated claims that such receivers are "under development." Sirius Satellite Radio Inc. SEC Form 10-K at 9 (March 13, 2006). XM Satellite Radio Holdings SEC Form 10-K at 11 (March 3, 2006).

4. While the transfer application that XM and Sirius filed on March 20, 2007, claims such models have been developed (*see* Application at pages 15-16), the parties state that there has been no "incentive" to subsidize their development, and "manufacturers have not expressed an interest in producing and distributing these radios." (*Id.* at page 16.)

III. FCC CLEARLY HAS THE AUTHORITY, AND INDEED A DUTY, TO ENSURE THAT THE XM-SIRIUS MERGER DOES NOT ENDANGER GENERAL AVIATION SAFETY AND MUST, AT A MINIMUM, CONDITION ANY XM-SIRIUS MERGER APPROVAL ON CONTINUED PROVISION OF XM'S SATELLITE SERVICE FOR AT LEAST 20 YEARS

A. Any XM-Sirius Offer To Make Aviation Weather Systems Interoperable Must Be Similarly Disregarded by Regulators

1. Ten years is more than enough time to meet satellite radio interoperability requirements that are designed to enhance consumer welfare and entertainment options.

2. A similar laissez-faire approach in the provision of aviation weather services would seriously threaten aircraft safety.

3. Future promises of an interoperable "fix" are unacceptable in the area of public safety.

B. Development of Equipment to Replace Garmin's XM-Enabled Products Would Take Years and Cost Manufacturers and Aircraft Owners Millions of Dollars

1. Marketing of weather-enabled aircraft systems requires FAA certification, which requires a minimum, in best cases, of 24 months.

2. Garmin has invested approximately $20 million in aircraft certification activities, with a substantial portion of this attributable to the weather-related service. Subsequent certifications to change the datalink from XM to Sirius are estimated to cost a half million to one million dollars each depending on the aircraft and complexity of the project.

3. Re-certifying all aircraft that currently use Garmin's XM-enabled systems would be a multi-year effort which would slow down new aircraft certifications and adversely impact aircraft manufacturers who depend on these certifications in order to develop, manufacture, and sell new aircraft.

4. Besides Garmin's cost and investment, existing aircraft owners would be required to spend millions of dollars to replace their installed systems. Each aircraft owner would need to spend between $5-6,000 for the replacement. Pilots with portable devices would similarly need to spend millions of dollars on new equipment.

C. FCC Authority To Review Mergers Includes Consideration Not Only of Anticompetitive Issues But Also Public Interest Concerns, Such as Public and Aviation Safety

1. If DOJ and FCC were to find the XM-Sirius merger warranted approval, authorities have unbridled authority to require conditions on approval. "FCC Approves Merger of AT&T Inc. and BellSouth Corporation," FCC Public Notice, Dec. 29, 2006; *SBC Communications Inc. and AT&T Comp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order*, FCC 85-183, Nov. 17, 2005.

2. The life of the avionics products that currently rely on XM's satellite weather service is typically 20 years.

3. As a matter of public and aviation safety, any decision by the FCC approving the proposed XM-Sirius merger must require the merged entity to continue to provide XM's current satellite-delivered weather service on the frequencies and with the format currently employed for a period of 20 years.

4. Any decision by the FCC that does not require the merged XM-Sirius entity to provide such service will have an extremely serious effect on commercial and general aviation safety in this country.