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October 2, 2007

### VIA EMAIL AND ELECTRONIC FILING

The Honorable Kevin Martin  
The Honorable Michael Copps  
The Honorable Jonathan Adelstein  
The Honorable Deborah Taylor Tate  
The Honorable Robert McDowell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

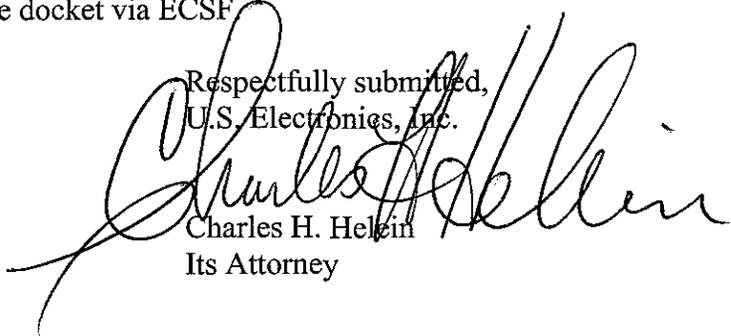
**Re: Consolidated Application for Authority to transfer Control of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. MB Docket No. 07-57**

Dear Mr. Chairman and Commissioners:

Attached for your consideration in connection with the above-referenced merger of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. please find a recent article posted by Seeking Alpha, the leading provider of stock market opinion and analysis from blogs, money managers and investment newsletters, and a provider of high-value, complementary financial content. This article is also available at <http://seekingalpha.com/article/48431-xm-sirius-merger-update-is-positivity-warranted>.

In accordance with Section 1.1.206 of the Commission's rules, 47 C.F.R. § 1.1206, and the Commission's Public Notice dated March 29, 2007 (DA 07-1435), a copy of this letter with the attached article is being filed in the docket via ECSF

Respectfully submitted,  
U.S. Electronics, Inc.

  
Charles H. Helein  
Its Attorney

cc: (via email):

Michelle Carey, Office of the Chairman, Rick Chessen, Office of Commissioner Copps, Rudy Brioche, Office of Commissioner Adelstein, Amy Blankenship, Office of Commissioner Tate, Angela Giancarlo, Office of Commissioner McDowell, Roy Stewart, William Freedman, Marcia Glauberman, and Rosilee Chiara, Media Bureau, Jim Bird, Ann Bushmiller and Joel Rabinovitz, Office of General Counsel, Bruce Ramano, Office of Engineering and Technology and Gardner Foster, David Strickland, Jerry Duvall and Shabnam Javid, International Bureau

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# XM-Sirius Merger Update: Is Positivity Warranted?

posted on: September 28, 2007 | about stocks: [SIRI](#) / [XMSR](#)

There have been a few noteworthy events in this deal over the last week, although we hesitate to label them as actual developments in the merger.

First, both the DOJ and FCC, via their respective leaders, have made comments on their pending reviews which the market in general has perceived as positive. This despite the fact that neither FCC Commissioner Martin, nor DOJ's Thomas Barnett have provided any substantial timing or directional guidance in their statements. The broader market also seems to ignore the basic fact that federal regulators -- particularly the DOJ -- simply do not issue public statements on pending matters that can be construed as positive or negative in a literal sense. It would have been shocking news if either representative did offer this sort of guidance.

Nevertheless, the fact that negative indications were not offered (again, these indications are never offered), has translated into perceived positive momentum for the merger which may very well continue for the next few weeks.

Second, in the FCC review, the Counsel for U.S. Electronics submitted an ex parte filing on September 21 which details concerns regarding the distribution habits of the companies as 'duopolists' and how hardware (radios) distribution may adversely affect consumers under a single entity. This is pointed out because it is a continuation of a relatively low-profile aspect of the merger which the FCC and DOJ are probably considering more closely than widely believed.

Similar to the concerns raised the National Public Radio, the Counsel for U.S. Electronics raise the question of how the combined entity will deal with contractual situations that are currently generated by competitive bidding by the two companies. From a content provider standpoint, all leverage to negotiate satellite radio broadcasting for programming will be eliminated by the merger. Likewise, as stated by a Counsel for U.S. Electronics representative,

Controlling the supply of network access devices through sole sourcing dictated by the network operator will harm consumers and competition.

The principal is nearly identical, whether it's a hardware or content provider. Compounding the issue is the fact that there are no legitimate conditions regulators can impose to protect third parties who currently use the "duopolists" (again, quoting the above representative) as negotiating leverage. While tiered pricing may benefit consumers and can be policed to some extent, there is currently no assurance or mechanism in place to keep the combined entity from dictating negotiating terms for products and services specific to satellite radio.

It is extremely difficult to gauge how this aspect is being considered by both regulators, but it must be assumed that they are factoring it into the long-term assessment of the merger. While the consumer aspects of a merger like this naturally grab the majority of the headlines, the FCC and especially the DOJ are certainly giving ample attention to the other parties who will be affected by the combination.

Finally, while there has been a great deal of speculation that the DOJ may reach a decision in this review within the next few weeks, there is currently no indication that this will occur. It appears that widespread misunderstanding of the second request compliance process has resulted in expectations of an early-October DOJ decision. This is likely the catalyst behind Mr. Barnett's assertion that the the agency is working "quickly as possible" to complete its review, but again there is currently no reason to anticipate formal DOJ action for several more weeks, if not months.

