

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
)  
XM Satellite Radio Holdings Inc., )  
)  
Transferor )  
) MB Docket No. 07-57  
and )  
)  
Sirius Satellite Radio Inc., )  
)  
Transferee )  
)  
Consolidated Application for Authority to )  
Transfer Control of XM Radio inc. and Sirius )  
Satellite Radio Inc. )

PETITION OF  
U.S. ELECTRONICS, INC.  
TO DESIGNATE APPLICATION FOR HEARING

Charles H. Helein  
Helein & Marashlian, LLC  
The CommLaw Group  
1483 Chain Bridge Road, Suite 301  
McLean, Virginia 22101  
703-713-1330  
[chh@commlawgroup.com](mailto:chh@commlawgroup.com)  
Counsel

Kathleen Wallman  
Wallman Consulting, LLC  
9332 Ramey Lane  
Great Falls, VA 22066  
202-641-5387  
[wallmank@wallman.com](mailto:wallmank@wallman.com)  
Adviser to U.S. Electronics

November 9, 2007

**TABLE OF CONTENTS**

EXECUTIVE SUMMARY ..... ii

I. INTRODUCTION ..... 1

II. ISSUES TO BE DESIGNATED ..... 2

III. BACKGROUND ..... 4

IV. ARGUMENT ..... 5

    A. Hearing Is Necessary to Resolve Factual Questions Regarding  
        the Impact of the Vertical Effects of the Merger ..... 5

        1. The Vertical Integration of Network Services and Network  
            Access ..... 8

        2. Proposed Merger Conditions Are Essential..... 15

    B. Hearing is Necessary to Determine What Amendments to the  
        Application Need Be Made Under Commission’s Rules ..... 16

V. CONCLUSION..... 16

<u>Exhibit</u>	<u>Description</u>
1	Sirius Form 8-K, November 5, 2007
2	Letter of Charles H. Helein to Michelle Carey, October 25, 2007

## EXECUTIVE SUMMARY

On October 12, 2007, USE filed a Petition to Defer Action to stop the standard 180-day clock the Commission uses to schedule action on major applications. On November 2, 2007, the Commission issued a detailed request for additional information to supplement the record. On November 5, 2007, Sirius filed a Form 8-K in relationship to the upcoming shareholders meeting called to vote approval on the merger. On November 16, 2007, Applicants are to respond to the Commission's request for additional information.

Having reviewed the Commission's latest request for additional information, USE submits that it does not include requests that will produce information about the issue USE has presented on the record, viz., the vertical integration issues that are at the heart of the public interest determination that the Commission must make: whether consumers will be irreparably harmed by allowing not only horizontal integration of the satellite radio services market, but the further integration of that consolidated market vertically with the market for providing satellite radio receivers.

Although USE has repeatedly raised this issue, and the Applicants have ignored it. Moreover, anticipating the Commission's November 2 information request, USE furnished in an ex parte filing on October 25, 2007, a list of 17 items of inquiry concerning the vertical integration through sole sourcing being followed by the Applicants.<sup>1</sup> Despite the breadth of the Commission's requests that were issued, requests critical to developing the facts on vertical integration were not included that will require a reasoned and supported response from the Applicants.

---

<sup>1</sup> Letter of Charles H. Helein, Counsel to USE to Michelle Carey, Senior Legal Advisor to Chairman Martin, October 25, 2007 (attached as **Exhibit 2**).

In addition, developments have occurred and are occurring outside the scope of the Commission's proceeding that relate to the issues surrounding the merits of the Merger. Although the Applicants are obligated to keep the information on their pending application accurate and up-to-date, they have not done so. This failure violates Rule 1.65 and the manner of that violation raises issue of candor that reflects on the Applicants character qualifications.

Under section 309 of the Communications Act, if there are substantial and material questions of fact outstanding concerning the merits of an application, the Commission must designate the application for hearing. As set forth in detail in this Petition, there are substantial and material questions of fact outstanding that require the Commission to designate the Consolidated Application for hearing.

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
XM Satellite Radio Holdings Inc.,	)	
	)	
Transferor	)	
	)	MB Docket No. 07-57
and	)	
	)	
Sirius Satellite Radio Inc.,	)	
	)	
Transferee	)	
	)	
Consolidated Application for Authority to	)	
Transfer Control of XM Radio inc. and Sirius	)	
Satellite Radio Inc.	)	

PETITION OF  
U.S. ELECTRONICS, INC.  
TO DESIGNATE APPLICATION FOR HEARING

U.S. Electronics, Inc. (USE), by its attorneys, hereby submits this petition on the Consolidated Application submitted by XM Satellite Radio Holdings Inc. (XM) and Sirius Satellite Radio Inc. (Sirius), (collectively, the “Applicants”) to transfer control of their satellite, earth station and related authorizations to a new entity (the “Merger”).

**I. INTRODUCTION**

If approved based on the record now before the Commission, the Merger will result in the merged entity having exclusive control both over the horizontal market for network services and the vertical market of the satellite radio receivers that are the exclusive means to access those services. The vertical integration of the merged entity’s sole control of network services over

network access devices raises substantial and material questions of fact regarding the Merger's impact on millions of existing and future consumers of today's satellite radio services and tomorrow's service enhancements.

## **II. ISSUES TO BE DESIGNATED**

The numerous and complex factual questions surrounding the vertical effects of the Merger have not been addressed by the Applicants. On the contrary, they have been side-stepped throughout the proceeding. In addition, important litigation developments bearing on the Commission's decision on the Consolidated Application are occurring and have occurred, but have not been disclosed to the Commission in the public record as required by the Commission's Rules. As a result, under applicable legal standards, the Consolidated Application must be designated for an evidentiary hearing before an Administrative Law Judge on the following issues.

**Issue 1: Whether the vertical integration between the market for providing satellite radio services on the one hand and the market for providing satellite radios receivers on the other hand violates Commission policies and decisions and is adverse to the public interest? In reaching a determination on this issue, the following should be considered:**

- (a) whether there is any public benefit to excusing the satellite radio network from the application of the established open network access requirement;
- (b) whether the public interest is harmed by the Applicants' departing from the use of multiple manufacturers, designers, and/or distributors to sole sourcing their requirements to single entities, and the facts and circumstances surrounding this departure;
- (c) whether consumers are likely to be harmed by the adverse effects of sole sourcing on consumer choice of devices to access network services, including without limitation, higher prices, less innovation, lower quality, hidden subsidies;
- (d) whether competition by and among manufacturers, designers, distributors and/or retailers in the satellite radio receiver market is likely to be harmed by the move to sole sourcing;

- (e) whether the considerations developed in response to (a)-(d) preceding have the same, similar or different impacts in the OEM (Auto) market versus the retail market;
- (f) whether the considerations developed in response to (a)-(e) preceding have the same, similar or different impacts in what the Applicants refer to as the broader audio entertainment market;
- (g) whether a broader market as described by Applicants exist ; and
- (h) whether there will be adverse economic effects caused by sole sourcing on the segment of the consumer electronics market for satellite radio receivers and devices in the OEM, retail or both markets.

**Issue 2: Whether the vertical integration between the market for providing satellite radio services on the one hand and the market for providing satellite radios receivers on the other hand has any public interest benefits? In reaching a determination on this issue, the following should be considered:**

- (a) what support exists, if any, for any claimed cost savings, protection of content or other benefits Applicants assert may arise from vertical integration and sole sourcing;
- (b) whether such cost savings or benefits are likely to flow through to the public and how; and
- (c) whether specific conditions preventing vertical integration through sole sourcing would serve the public interest.

**Issue 3: Whether the public interest, convenience and necessity would be served by the grant of the Consolidated Application without conditions being imposed preventing vertical integration through sole sourcing?**

**Issue 4: Whether the Applicants have failed to comply with their duties under Commission Rule 1.65, 47 C.F.R. Part 1, §1.65, for the continuing accuracy and completeness of information furnished in the Consolidated Application? In reaching a determination on this issue, the following should be considered:**

- (a) recent developments on the pending class action litigation entitled *Brockwell v. Sirius Satellite Radio, Inc., et al.*, Index No. 60019/07 and *Johnson v. Sirius Satellite Radio, Inc., et al.*, Index No. 600899/07, pending in New York Supreme Court, New York County (Commercial Division) (“class actions”);
- (b) whether the failure to disclose to the Commission the matters related to shareholder actions and disclosures to shareholders violate Rule 1.65?

### III. BACKGROUND

On November 2, 2007, the Commission issued a detailed request for additional information.<sup>2</sup> If the Applicants timely comply with this request, it will result in a substantial improvement in the state of the record before the Commission. Yet, USE respectfully submits that this latest request for additional information still was not as comprehensive as is necessary to get at the vertical integration issues that are at the heart of the public interest determination that the Commission must make: whether consumers will be irreparably harmed by allowing not only horizontal integration of the satellite radio services market, but the further integration of that consolidated market vertically with the market for providing satellite radio receivers. Whatever protections the Commission may responsibly fashion against horizontal effects of the Merger can be erased by the merged entity's ability to extract monopoly rents in the sole sourced controlled market for devices to access the network.

USE has repeatedly raised these issues, and the Applicants have continuously side-stepped them.<sup>3</sup> As a last step in advance of seeking this designation for hearing, and in

---

<sup>2</sup> Letter of Monica Shah Desai, Chief, Media Bureau to Richard Wiley, et al, Counsel to Sirius, November 2, 2007 and Letter of Monica Shah Desai, Chief, Media Bureau to Gary M. Epstein, et al, Counsel to XM (collectively, the "FCC Information Request").

<sup>3</sup> As further evidence of the Applicants' refusal to acknowledge and address the vertical integration issues obviously raised in this merger, USE attaches as **Exhibit 1** Sirius' November 5, 2007 Form 8-K. As shown by **Exhibit 1**, no disclosures have been made concerning the issue raised by USE that sole sourcing of satellite radio receivers is contrary to well established precedents and policies of the Commission requiring open access to communications networks. No disclosures, comments or evaluations are provided on the impact on the merger if the merged entity is required to adhere to the open access policies. No disclosures, comments or evaluations are provided in defense of the Applicants' move to the practice of sole sourcing. No disclosures, comments or evaluations are provided on the impact on the merger if the merged entity is required to comply with the specific conditions proposed by USE that would prohibit continuation of a sole sourcing practice and require the merged entity's network to operate in an open access environment. Likewise, no mention is made of the November 2, 2007 request for information made by the Commission, no statement made whether the Applicants can comply with the request by the return date of November 16, 2007. No disclosure is made about the

anticipation of the Commission's November 2 information request, USE furnished in an ex parte filing on October 25, 2007, a list of 17 items of inquiry concerning the vertical integration through sole sourcing approach being pursued by the Applicants.<sup>4</sup> Despite the breadth of the requests that the Commission issued, many of the issues in these critical areas still have not been joined in a way that will finally require a reasoned and supported response from the Applicants. It is for this reason, with some reluctance in view of the burden placed on the Commission's staff, that USE seeks this designation for hearing.

#### **IV. ARGUMENT**

##### **A. Hearing is Necessary To Resolve Factual Questions Regarding the Impact of a Vertical Monopoly If The Proposed Merger is Approved Without Conditions.**

Section 310(d) of the Communications Act provides that no station license may be transferred, assigned, or disposed of in any manner except upon a finding by the Commission that the "public interest, convenience and necessity will be served thereby."<sup>5</sup> Among the factors that the Commission considers in its public interest inquiry is whether the applicant for a license has a requisite "citizenship, character, financial, technical, and other qualifications."<sup>6</sup>

Also, pursuant to section 310(d) of the Act, the Commission must determine whether the Applicants have demonstrated that the proposed Application will serve the public interest,

---

consequences of non-compliance on the timing of the merger process before the Commission. No mention is made on the potential consequences of the Commission's information request on the ability to complete the merger before year-end as has consistently been predicted or the possible implications if the merger is not completed by March 31, 2008 as required by the merger agreement.

<sup>4</sup> Letter of Charles H. Helein, Counsel to USE to Michelle Carey, Senior Legal Advisor to Chairman Martin, October 25, 2007 (attached as **Exhibit 2**).

<sup>5</sup> 47 U.S.C. §310(d).

<sup>6</sup> See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor to SBC Communications, Inc., Transferee*, 13 FCC Rcd 21292, 21305 (1998).

convenience and necessity. In making this determination, the Commission must assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. *In the Matter of Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferee)*, Hearing Designation Order, Rel. October 18, 2002 (FCC 02-284) (*EchoStar Order*), ¶ 25. The public interest standards of section 310(d) involve a balancing process that weighs the potential public interest harms of the proposed transactions against the potential public interest benefits. *See id.*, citing, *Applications of VoiceStream Wireless Corp., Powertel, Inc., and deutsche Telekom AG*, 16 FCC Rcd 9779, 9789 (2001); *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications For grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc*, 14 FCC Rcd 19410 (1999).

Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction on balance, serves the public interest. *See id.*, citing, e.g., *Applications for Consent to the Transfer of control of Licenses and Section 214 Authorizations from Telecommunications, Inc., Transferor to AT&T Corp., Transferee*, 14 FCC Rcd 3160, 3168-70 (1999). If the record presents a substantial and material question of fact, Section 309 of the Act requires that the Commission designate the application for hearing.<sup>7</sup>

The Commission has stated that its Merger analysis is informed by, but not limited to, traditional antitrust principles, noting that while antitrust analysis focuses solely on whether a

---

<sup>7</sup> 47 U.S.C. § 309(e). Section 309(e)'s requirement applies only to those applications to which Title III of the Act applies (e.g., radio station licenses).

proposed merger's effect may be substantially to limit competition, the Act requires the Commission to evaluate independently a merger's public interest benefits or harms and the merger's likely effect on future competition. See Memorandum Opinion and Order, *Applications for Consent to the Transfer of Control of Licenses an Section 214 Authorizations by time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd 6547 (2001) ("*Time Warner-AOL Order*"). Within this framework, the Commission has historically analyzed the impact of vertical integration as part of its merger review process, both in terms of the competitive impact generally and the public interest aims of its rules. *Id.* at ¶¶ 284-312.

The Applicants' proposed Merger presents a classic example of the vertical combination. The potential negative impact to consumers as a result of the Merger's vertical monopoly must be not only considered, but fully explored by the Commission, in evaluating the Application at hearing. The Applicants have failed to meet their burden of proof to show that, on balance, the proposed Merger is in the public interest. See *Time Warner-AOL Order*, 16 FCC Rcd. at 6547. Clearly, the record indicates that substantial potential public interest harms will result from the transaction, which in turn creates the need for Applicants to demonstrate that substantial and cognizable merger-specific public interest benefits will flow from the combination. *EchoStar Order* at ¶ 275. The record irrefutably demonstrates that the proposed transaction would create an undesirable vertical monopoly.

Competitive impacts are an important aspect of the Commission's public interest standard, as is consistency with Communications Act policy and the Commission's rules. *Id.* at 276. As the Commission has undisputedly expressed:

The landmark Telecommunications Act of 1996 set forth a 'procompetitive, de-regulatory nation policy framework' that opened 'all telecommunications markets to

competition' with the aim of accelerating 'rapidly private sector deployment of advanced telecommunications and information technologies.' Competition in the communications industries is the cornerstone of our modern communications policy because it is well recognized that competition, rather than regulation of monopoly providers, has the greatest potential to bring consumer welfare gains of lower prices and more innovative services. Accordingly, a proposed transaction's consistency with the Act, our rules and competition policy in general is an integral part of our public interest review. *Id.*<sup>8</sup>

Based on the record thus far developed, there is no doubt that *numerous* substantial and material questions of fact remain unresolved in regard to vertical integration through sole sourcing. In addition, the status of the class actions in the New York Supreme Court, and the disclosures of those actions by Sirius as reported in its Form 8-K filing with the SEC, raise factual issues concerning whether Sirius has been prompt, accurate and complete in updating the Commission on decisional developments as required by the Commission's rules.

Under the applicable legal standards, the Application should be designated for hearing.

#### **1. The Vertical Integration of Network Services and Network Access**

FCC Chairman Kevin Martin has more than once stated the clear benefits of competition in communications. For example, he has stated: "A network that is more open to devices and applications can help foster innovation on the edges of the network. As important, it will give consumers greater freedom to use the wireless devices and applications of their choice when they purchase service from the new network owner." Statement of Chairman Kevin Martin on *Second Report and Order, WT Docket No. 06-250, et al*, on adopting rules to govern wireless licenses in the 698-806 MHz Band ("*Second Report and Order on 700MHz*").

---

<sup>8</sup> See *EchoStar Order* – wherein the Commission recognized that "[t]he Commission has a long history of establishing spectrum-based commercial services with no fewer than two participants per service, with the aim of creating competitive markets for spectrum-based voice, video and data services. The Applicants have cited no example where we have permitted a single commercial spectrum license to hold the entire available spectrum allocated to a particular service." *Id.* Notably, the Applicants here have not cited to any support to depart from this history.

This observation is clearly applicable to the vertical integration issue enwrapped in the proposed Merger. Satellite radio receivers are essential hardware for people wanting to access a satellite radio network. The devices enable listeners to pick up a signal and access the programming offered by the satellite radio provider. Through competition, consumers reap more functional, feature-rich receivers at a lower cost.

While many commenters have focused on how a satellite radio monopoly could quash competition, increasing subscription costs and reducing content diversity, few have addressed the following question:

Is the public interest served if access to the satellite radio network is restricted to receivers whose development, manufacturing and distribution will be in the sole control of a new monopoly?

**Restricting Access to the Satellite Network through Sole Sourcing.** Whether it be networks for satellite radio, cable or mobile phone service, sole sourcing eliminates competition among companies that manufacture and distribute the devices that enable consumers to access those networks. That this results in higher prices, less innovation and limited options is axiomatic.

**Increasing price for consumers.** By eliminating competition, through sole sourcing or other means, efficiencies are not always realized, and the savings spurred by such competition do not always reach the consumers.

- Sirius already has demonstrated its inability to pass along to consumer's savings based on innovation or efficiencies. For instance, there has been little to no reduction in the retail price of new generation "plug and play" receivers – even though, among other things, they are made with an improved, less expensive chipset and share common components with other models.
- Sirius and XM plan to combine their services and offer an a la carte option that includes channels from both providers. This could require new hardware to receive signals from both companies and possibly new in-vehicle antennas for existing customers -- an added expense that would likely be borne by all consumers, even those not opting for the a la carte offering.

**Stifling innovation and reducing choice for consumers.** Sole sourcing enables Sirius and XM to control and dictate the development, licensing, manufacture and distribution of receivers. And, it lets them limit the choice of the technology that is built into the receivers.

- › By pursuing a sole source philosophy, Sirius and XM could thwart non-favored suppliers and, in the process, stifle the development of new generation satellite radio receivers. In fact, even in today's duopoly, the shift to exclusive hardware providers means competitors already are being prevented from entering the marketplace.
- › Sole sourcing effectively limits the incentive to develop innovative hardware because non-favored providers are unable to compete equally against the duopolists' favored providers. As a result, there are fewer choices for consumers. Also, there is an increased risk that quality control problems, production defects or regulatory compliance issues can cripple the network providers' ability to deliver new products.
- › OEM consumers are deprived of user-friendly features when a network provider limits the sources of satellite radios to exclusive manufacturers. In fact, earlier 'plug and play' models, produced when more manufacturers competed, offered users the ability to transport the receiver from car to home; listen to content at a later time; or, alert subscribers when their favorite content or sports team is playing on another station.
- › The first Sirius product introduced under the recent shift to an exclusive distributor – the S50 – is an example of the dilemma sole sourcing creates for consumers. The S50 had software and hardware problems that resulted in elevated consumer returns and delays in the replacement of the defective units. With competition, consumers would have had the opportunity to buy other hardware to solve the S50 problems.
- › XM currently markets the Passport or Mini Tuner chipset that can be plugged into compatible devices such as portable navigation units and home stereos – turning those devices into XM receivers. If there were competition, and the chipset widely available, carmakers could potentially spend less installing expensive hardware not ultimately used by many new car purchasers, consumers would not be forced to buy additional subsidized equipment if they wanted to receive satellite programming outside their new cars, and service providers could recycle 'free trial' chipsets.
- › Through sole sourcing, a network provider can further limit consumer options by withholding adequate supplies of hardware from retailers or by providing supplies that differ in quality.

In particular, USE has pointed out that the vertical integration of the access device market resulting from the merger would deprive consumers of product choice, innovation in design, functionality and features, would result in higher prices, restricted inventories, and

limited distribution alternatives, and have a profound adverse impact on both OEM (the automotive market for satellite radio receivers) and retail (from major retail chains and outlets to electronic boutiques). USE has also shown how dominance of the equipment submarket can be used to manipulate profits to the detriment of consumers. For example, while the Commission focuses on ensuring subscription rates are not increased, the merged entity's sole sourcing will allow it to price equipment to subsidize lower subscription rates rendering Commission oversight of that consumer interest of limited or no benefit.

Even if one were to assume that the market is as large as Sirius and XM now suggest, their ability to engage in sole sourcing as a monopoly would give them significant advantages at the retail level over their so-called audio entertainment "competitors," the iPods, MP3s, Internet, etc. The critical fact is that the merged entity will be the only entity providing satellite radio product to retailers. Absent competitively protective conditions, its control of the product any consumer must buy who wants its unique national multi-channel subscription audio entertainment/information services provides it with coercive and predatory power not only in the "broader market" it has defined, but also in the submarket that will affect that "broader market." The merged entity can use this power in the horizontal market to discipline and neutralize the competition its self-proclaimed rivals may offer. Retailers, especially small, independent retailers, mom and pop retailers, will either acquiesce or lose their right to sell the merged entity's product. In other words, especially the small retailers can be denied to right to sell satellite radios unless they accept conditions and make concessions dictated by the merged entity. By withholding product, demanding concessions on advertising, shelf space, ad placements, etc., or by forcing abandonment of competitive products, the merged entity will be in a unique position to compromise the competitive environment that would otherwise exist.

The power of the merged entity also extends to the automotive industry, by far the more active and extensive market for satellite radio receivers today and the foreseeable future.<sup>9</sup> At the outset, it should be emphasized that apart from the issue of sole sourcing as discussed below, there is no “broader market” argument that can be made regarding the auto industry. On the auto industry side of the satellite radio receiver business sole sourcing has been the only method of manufacturing, design and distribution. And it may be taken as a given that the sole sourcing in this market segment accounts in large part, if not exclusively for the fact that satellite radio receivers in autos do not offer the consumer the same features available to retail consumers.

In addition, technology in this market segment has not improved despite advances in the technology of chipsets and added new features. Furthermore, simple accessories permit retail consumers to move (via plug & play) their subscription-based hardware to other desired locations does not exist in this market segment. Satellite radio receivers in autos are embedded in the vehicles in which they are installed and cannot be removed. Surprisingly, this is the fact even though one of the Applicants at least, XM, has the technology that permits removal of their chipset from compatible hardware. XM has “explained” that its failure to deploy the technology that would allow movement of the receivers is based on its “business model” that requires auto customers opting to include XM satellite radio services in their choice of options to purchase additional hardware and expand their subscriptions only after they have subscribe to XM’s service available in car.

While the auto industry is different from the retail industry in that industry members of the former are all large corporations whereas the latter includes businesses of all sizes, the duopolists of today and merged entity of tomorrow have the same coercive and predatory power

---

<sup>9</sup> The market for satellite radio receivers in the auto industry is often referred to as the “OEM market.”

to leverage their control in the auto market segment as well. It is ironic that those few members of the industry that have commented in favor of the merger appear to ignore or are being kept in the dark about the danger that sole sourcing presents to their otherwise expressed concerns that their auto customers have the best products and features available to them.

The fact that the auto industry has had no experience with a competitive market environment being exposed only to sole sourcing, and that there are only two and will be only one satellite radio network, may explain why some have accepted the Applicants' position line that only by the merger will they be able to offer the auto buying public the best satellite radio equipment available. But nothing could be further from the truth.

Like large, medium and small retailers, the "only game in town" power of a merged entity will expose car manufacturers to its "take it or leave it" terms or be excluded from offering the satellite radio option to the car buying public. The ability of the merged entity to exercise such power even over such large companies as the car manufactures can be demonstrated by comparing the difference in market characteristics for other highly popular consumer audio products. For example, if Apple excluded a carmaker from including an iPod interface, the carmaker could add an auxiliary audio input that would allow connection to any other MP3 player as well as to the theoretically excluded iPod via the audio output. There is multiple HD radio hardware providers and receiver options available to consumers as well. In short, carmakers could not be excluded from benefiting from the competitive market that exists for all other audio devices, while they can be for satellite radio if sole sourcing is not prohibited and monitored.

**Relevance of Applicants' Past Noncompliant Behavior.** As a policy, the Commission looks at an applicant's past practices and its compliance record to determine how the public interest may be affected in the future. The record here shows:

- Both Sirius and XM constructed numerous towers and antennas at unauthorized sites or transmitted above allowable levels;
- Both Sirius and XM have failed to make available an interoperable radio almost ten years after the FCC arguably required them to do so;
- Sirius refused to honor consumer rebates that were offered as part of a 2004 satellite receiver promotion, rejecting a large majority of those that were tendered;
- Sirius not only exceeded FCC emission standards, it also publicly admitted that its own personnel requested its manufacturers to exceed the FCC's limits; and,
- Sirius claims that new subscribers to the merged entity will be able to use their existing hardware to access additional channels. Nevertheless, some existing hardware is incapable of accessing all the content that is currently being disseminated.

**Sole Sourcing Violates the Sound Policy of Open Access.** A merger that results in the service provider restricting network access would fly in the face of 50 years of FCC policy and precedent. The most recent affirmation of this policy was made in the Commission's *Second Report and Order*, WT Docket No 06-150 et al, FCC 07-132 (Rel. August 10, 2007) (*Second Report and Order on 700 Mhz*) on wireless licenses in the 698-806 MHz Band. The policy was first established 50 years earlier In *Hush-a-Phone* and *Carterphone* decisions in which the FCC recognized the benefits of allowing consumers the ability to access the network via equipment produced by entities other than the network operator. These early decisions were then codified in Part 68 of the Rules. Later Congress codified the concept in Section 629 of the Telecommunications Act of 1996, the FCC issue implementing rules at 76 C.F.R. §1200 et seq., and the Courts affirmed these regulations in *Charter Communications Company v. FCC*, 460 F.3d 31 (D.C. Cir. 2006).

As the FCC continues to embrace this policy today, the public interest imperative is clear -- consumers of satellite radio services are entitled to the same rights as every consumer of any other wireless service and network. A satellite network provider must be prohibited from limiting the availability of satellite radio receivers to those designed, developed, manufactured

and distributed by the provider directly or through its designated suppliers. Such a condition would help to enhance competition, and in the process, protect consumers.

## **2. Proposed Merger Conditions Are Essential**

USE has proposed conditions in its ex parte meetings and filings that if adopted will eliminate the public harm arising from vertical integration through sole sourcing. Regardless of whether the Merger is approved, Sirius and XM should be required to provide open access to their network for the benefit of all satellite radio listeners. Such a condition is necessary to ensure consumer choice, favorable pricing, and innovation. Among other things, any merged entity should:

- Be barred from directly or indirectly engaging in or interfering with the design, manufacture or distribution of satellite radio receivers or other digital devices that can access the satellite radio network;
- Publish and make available information on the technical requirements and specifications of its network, including reasonably advanced notice of any changes to any qualified and willing partner;
- Not interfere with consumers' access to, or their choice of, devices by which to access the network;
- Comply with rules and regulations that provide for the compatibility of receivers to ensure that the satellite radio using public has reasonable and non-discriminatory access to the satellite radio network;
- Comply with the FCC's policy that the public has the right to use any device to access and make use of the satellite radio network, consistent with the principles established in the Hush-a-Phone and Carterphone decisions -- as codified in Part 68 of the FCC's Rules, 47 C.F.R. Part 68; as well as the principles established under Section 629 of the Telecommunications Act of 1996, the FCC's implementing rules of Section 629, 76 C.F.R. §1200 et seq., and the Court's affirmation of the FCC's implementing regulations in *Charter Communications Company v. FCC*, 460 F.3d 31 (D.C. Cir. 2006) and in the *Second Report and Order on 700Mhz*, FCC 07-132; and importantly,
- In view of past noncompliant behavior, be subject to an independent monitor who will ensure compliance with FCC rules and regulations.

**B. Hearing is Necessary to Determine What Amendments to the Application Need Be Made Under Commission's Rules**

Section 1.65 of the Commission's rules requires Applicants to maintain the accuracy and completeness of their applications and promptly notify the Commission of any substantial changes that may be of decisional significance.<sup>10</sup> USE does not find in the record before the Commission any disclosures by the Applicants concerning the shareholder litigation cited above, which is material to the transaction for which approval is sought.

The Applicants' failure to inform the Commission of the status of shareholders' actions in regard to the scheduled shareholders' meeting and other shareholder concerns bears on their compliance with Rule 1.65. For this additional reason, to obtain the facts about these issues the implications of the Applicants' failure to keep the Commission informed of developments with decisional significance.

**V. CONCLUSION**

USE has made it clear on the record that vertical integration through sole sourcing is an issue that already is impacting the public interest and that if the Merger is approved without dealing with this issue, millions of consumers will lose, competition among manufacturers, designers, distributors and retailers will be harmed, industry economics will be stifled and all this would take place despite the numerous court and FCC decisions that preclude such a practice.

To properly deal with this issue, the Commission must determine what effect vertical integration will have on consumer choices in access, on pricing, quality, and innovation. The Commission must determine how the benefits the Applicants say will result from the Merger will be affected if vertical integration is not dealt with properly. The Commission must determine

---

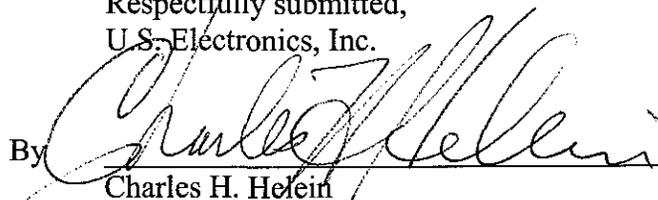
<sup>10</sup> 47 C.F.R. §1.65 (An applicant must report any substantial change in information relevant to its application no later than 30 days after the change.)

what conditions need to be imposed to ensure that vertical integration does not produce public harm after the Merger.

To make these determinations, substantial and material factual questions exist that the Applicants have simply refused to recognize, much less address. And because the issues here are factual, when the Applicants are made to respond to them in hearing, the Commission needs to determine if there are reasons to be concerned about promptness, accuracy and completeness of Applicants' disclosures about developments of decisional significance regarding the transaction to the Commission. To make these factual determinations, the Commission is required under applicable legal standards to designate these matters for resolution by hearing.

Respectfully submitted,  
U.S. Electronics, Inc.

By



Charles H. Helein  
Its Counsel

Of Counsel:  
Helein & Marshlian, LLC  
The CommLaw Group  
1483 Chain Bridge Road, Suite 301  
McLean, VA 22101

Kathleen Wallman  
Wallman Consulting, LLC  
9332 Ramey Lane  
Great Falls, VA 22066  
Advisor to U.S. Electronics, Inc.

## CERTIFICATE OF SERVICE

I, Sherry A. Reese, hereby certify that, on this the 9<sup>th</sup> day of November, 2007, copies of the foregoing, Petition of U.S. Electronics, Inc. to Designate Application for Hearing were delivered via U.S. first class mail, postage prepaid to the following:

Richard E. Wiley  
Robert L. Pettit  
Peter D. Shields  
Jennifer D. Hindin  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Patrick L. Donnelly  
Executive Vice President, General Counsel,  
and Secretary  
Sirius Satellite Radio Inc.  
1221 Avenue of the Americas  
36<sup>th</sup> Floor  
New York, NY 10020

Gary M. Epstein  
James H. Barker  
Brian W. Murray  
Latham & Watkins LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004

Dara Altman  
Executive Vice President, Business and Legal  
Affairs  
XM Satellite Radio Holdings Inc.  
1500 Eckington Place, NE  
Washington, DC 20002

And were delivered via electronic mail to the following:

### **Federal Communications Commission**

Honorable Kevin Martin  
Honorable Michael Copps  
Honorable Jonathan Adelstein  
Honorable Deborah Taylor Tate  
Honorable Robert McDowell  
Rick Chessen  
Rudy Brioche  
Amy Blankenship  
Angela Giancarlo  
Michelle Carey

  
Sherry A. Reese

# EXHIBIT 1

8-K 1 c51040\_8-k.htm

---

---

**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

---

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 5, 2007

**SIRIUS SATELLITE RADIO INC.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or other Jurisdiction  
of Incorporation)

**0-24710**  
(Commission File Number)

**52-1700207**  
(I.R.S. Employer  
Identification No.)

**1221 Avenue of the Americas, 36th Fl., New York, NY**  
(Address of Principal Executive Offices)

**10020**  
(Zip Code)

Registrant's telephone number, including area code: **(212) 584-5100**

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
- 
- 
-

### Item 8.01 Other Events.

On or about October 9, 2007, Sirius Satellite Radio Inc. ("Sirius" or the "Company") mailed a proxy statement relating to a special meeting of stockholders scheduled for November 13, 2007 to vote on proposals in connection with the pending merger with XM Satellite Radio Holdings Inc. ("XM"). At the special meeting, stockholders will vote on, among other things, whether to amend Sirius' certificate of incorporation to increase the number of authorized shares of Sirius common stock and approve the issuance of Sirius common stock and Sirius Series A convertible preferred stock pursuant to the Agreement and Plan of Merger, dated as of February 19, 2007, by and among Sirius, XM and Vernon Merger Corporation.

As disclosed in the proxy statement, Sirius, Joseph P. Clayton, Mel Karmazin, Leon D. Black, James F. Mooney, Michael J. McGuinness, Warren N. Lieberfarb, James P. Holden, and Lawrence F. Gilberti are defendants in two purported class action lawsuits entitled *Brockwell v. Sirius Satellite Radio, Inc., et al.*, Index No. 60019/07 and *Johnson v. Sirius Satellite Radio, Inc., et al.*, Index No. 600899/07, pending in New York Supreme Court, New York County (Commercial Division). Plaintiffs in these lawsuits allege that, in connection with the merger, the Sirius Board of Directors failed to adequately account for and consider: (i) the true value of Sirius and XM; (ii) certain XM litigation and regulatory liabilities; and (iii) the impact of concessions that Sirius and XM would need to make in order to obtain antitrust approval for the merger. Sirius and the other defendants deny these allegations.

Solely to avoid the costs, risks and uncertainties inherent in litigation and to allow stockholders to vote on the proposals required in connection with the merger at the scheduled meeting, Sirius and the other defendants have entered into a memorandum of understanding with plaintiffs' counsel in the *Brockwell* and *Johnson* lawsuits (the "Memorandum of Understanding") pursuant to which Sirius, the other named defendants and the plaintiffs have agreed to settle the lawsuits subject to court approval. If the court approves the settlement, the lawsuits will be dismissed with prejudice.

In the Memorandum of Understanding, Sirius agreed to provide certain additional information to stockholders through publicly available filings. Without admitting in any way that the disclosures below are material or otherwise required by law, Sirius makes the following supplemental disclosures:

#### Supplemental Disclosures Concerning Background of the Merger

On October 24, 2006, Mr. Karmazin briefed the Sirius board of directors on his discussions with XM regarding a possible business combination, summarizing his discussions with Messrs. Parsons and Panero over the past month. Among other things, Mr. Karmazin discussed with the Sirius board of directors regulatory issues involved with a merger, the likely market reaction, and the value creation and synergies that would arise from a business combination. The Sirius board of directors engaged in an extensive discussion of the potential cost savings, including savings in cost centers, research and development and general and other expenses. The board further discussed XM's assets, its relationships with automakers, whether

---

there were other potential bidders for XM, and XM's capital structure. Following this discussion, the Sirius board authorized Mr. Karmazin to continue discussions with XM.

In connection with their due diligence reviews, Sirius and XM instituted procedures to ensure that competitive information that was not legally appropriate to disclose was not exchanged by the management of the companies. In certain cases, management of each company reviewed documents provided by the other company that did not include competitive information; and, in other instances, outside counsel to each company reviewed materials but was not permitted to share competitively sensitive information with their clients. Sirius and Sirius' advisors reviewed, among other things, XM's agreements with automakers (Toyota, Hyundai, Nissan, General Motors, Honda), sports leagues and conferences (MLB, NHL, ACC, Big East, Pac-10), retailers (Wal-Mart, Circuit City, Best Buy), news providers (CNN, Fox News), entertainment content providers (Oprah, Opie & Anthony, Starbucks, ABC/ESPN), technical service providers (Loral, Sea Launch) and radio manufacturers (Delphi).

Sirius' advisors also conducted a due diligence review of XM's litigation and regulatory matters, including but not limited to: (i) the purported stockholder class action captioned *In re XM Satellite Radio Sec. Litig.*, Civ. Act. No. 06-00802 (ESH) (D.C.), which has since been dismissed with prejudice; (ii) an action by members of the recording industry captioned *Atlantic Recording Corp., et al., v. XM Satellite Radio, Inc.*, No. 06-3733 (DAB) (GWG) (S.D.N.Y.); (iii) a purported consumer class action captioned *Enderlin v. XM Satellite Radio Holdings, Inc., et al.*, (E. Dist. Ark.); (iv) proceedings before the Copyright Royalty Board; (v) an arbitration concerning satellite insurance matters; and (vi) various FCC, FTC and SEC inquiries. In connection with these matters, Sirius' advisors reviewed pleadings and court filings, conducted research and received briefings from XM's in-house and outside counsel.

#### Supplemental Disclosure Concerning Reasons for the Merger

Sirius believes that the merger will result in significant cost synergies. Wall Street equity analysts have published estimates of the present value of cost synergies ranging from \$3 billion to \$9 billion. Sirius expects operating cost savings to be achievable in almost every cost item on the companies' income statement, including:

- sales and marketing (through, among other things, lower brand advertising expense, cost reductions in retail relationship management, sales training, retail placement monitoring, and ad sales);
- subscriber acquisition (through areas such as lower radio production costs driven by enhanced scale);
- research and development (including through the possible elimination of duplicative R&D efforts with the adoption of technological developments across platforms, and the elimination of overlapping R&D resources);
- general and administrative expenses (through the elimination of redundant staff);
- product development;

- 
- content (through potential improvement in margins given broader audience reach and lower internal programming costs by elimination of certain channel overlap); and

- programming operating infrastructure (as a result of the potential to rationalize maintenance and administrative capital expenditures, and avoid the duplication of disaster recovery expenses).

Moreover, over the long-term, Sirius believes the combined company will derive significant additional value by procuring its future generation satellites and terrestrial repeaters as a single entity and by potentially reducing satellite, engineering and support requirements.

Supplemental Disclosure Concerning the Sirius Board of Directors' Recommendation

The factors and risks considered by the Sirius board of directors in connection with its determination that the merger and entering into the merger agreement with XM are advisable and in the best interest of Sirius and its stockholders, and its approval thereof, also include the probability that other strategic alternatives would fail to provide Sirius' stockholders with the same value, synergies and cost savings as would a business combination with XM.

Supplemental Disclosure Concerning Opinion of Financial Advisor to the Sirius Board of Directors

The table below lists premiums for the transactions reviewed in connection with this analysis:

<b>Deal</b>	<b>1 Day</b>	<b>5 Days</b>	<b>10 Days</b>
<b>Bank of New York/Mellon Financial</b>	6%	6%	6%
<b>CVS/Caremark</b>	6%	5%	3%
<b>Goldcorp/Glamis</b>	32%	32%	33%
<b>Thermo Electron/Fisher</b>	7%	8%	8%
<b>Alcatel/Lucent</b>	7%	4%	0%
<b>AT&amp;T/Bellsouth</b>	18%	17%	17%
<b>Symantec/Veritas</b>	10%	29%	39%

Sirius paid Morgan Stanley \$4,576,000 in connection with Morgan Stanley's services rendered as the administrative and collateral agent under its \$250 million senior secured term credit facility. In addition, in the five years preceding the execution of the merger agreement, Sirius paid Morgan Stanley an aggregate of approximately \$28,000,000 in connection with the underwriting and placement of various issuances of convertible debt securities and debt securities.

Supplemental Disclosure Concerning Regulatory Approvals Required for the Merger

In response to a "Second Request" for information relating to the merger from the U.S. Department

of Justice, Sirius has produced millions of pages of documents from the files of many of its executives. These documents include business planning documents, documents discussing competition in the audio entertainment industry, pricing documents, as well as documents covering numerous other categories. In response to the Second Request, Sirius has also produced data regarding its business operations, including information on revenues, sales, and prices which was requested by the Department of Justice. As part of its investigation and as is typical in Second Request investigations, the Department of Justice has taken deposition testimony and, Sirius understands, has requested information from some third parties, including from Sirius' competitors in audio entertainment. On September 4, 2007, Sirius and XM each certified to the Department of Justice that they were in substantial compliance with the Second Request.

\*\*\*

*This communication contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements include, but are not limited to, statements about the benefits of the business combination involving Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc., including potential synergies and cost savings and the timing thereof, future financial and operating results, the combined company's plans, objectives, expectations and intentions with respect to future operations, products and services; and other statements identified by words such as "anticipate," "believe," "plan," "estimate," "expect," "intend," "will," "should," "may," or words of similar meaning. Such forward-looking statements are based upon the current beliefs and expectations of Sirius' and XM's management and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are difficult to predict and generally beyond the control of Sirius and XM. Actual results may differ materially from the results anticipated in these forward-looking statements.*

*The following factors, among others, could cause actual results to differ materially from the anticipated results or other expectations expressed in the forward-looking statement: general business and economic conditions; the performance of financial markets and interest rates; the ability to obtain governmental approvals of the transaction on a timely basis; the failure of Sirius and XM to obtain the required stockholder approvals; the failure to realize synergies and cost-savings from the transaction or delay in realization thereof; the businesses of Sirius and XM may not be combined successfully, or such combination may take longer, be more difficult, time-consuming or costly to accomplish than expected; and operating costs and business disruption following the merger, including adverse effects on employee retention and on our business relationships with third parties, including manufacturers of radios, retailers, automakers and programming providers. Additional factors that could cause Sirius' and XM's results to differ materially from those described in the forward-looking statements can be found in Sirius' and XM's Annual Reports on Form 10-K for the year ended December 31, 2006, and Quarterly Reports on Form 10-Q for the quarters ended March 31, 2007, June 30, 2007 and September 30, 2007 which are filed with the Securities and Exchange Commission (the "SEC") and available at the SEC's Internet site (<http://www.sec.gov>). The information set forth herein speaks only as of the date hereof, and Sirius and XM disclaim any intention or obligation to update any forward looking statements as a result of developments occurring after the date of this communication.*

*Important Additional Information Has Been Filed with the SEC*

*This communication is being made in respect of the proposed business combination involving Sirius and XM. In connection with the proposed transaction, Sirius has filed with the SEC a Registration*

5

---

*Statement on Form S-4 containing a Joint Proxy Statement/Prospectus and each of Sirius and XM have filed with the SEC other documents regarding the proposed transaction. The definitive Joint Proxy Statement/Prospectus was mailed to stockholders of Sirius and XM on or about October 9, 2007. **INVESTORS AND SECURITY HOLDERS OF SIRIUS AND XM ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY IN THEIR ENTIRETY BECAUSE THEY CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.***

*Investors and security holders may obtain free copies of the Registration Statement and the Joint Proxy Statement/Prospectus and other documents filed with the SEC by Sirius and XM through the web site maintained by the SEC at [www.sec.gov](http://www.sec.gov). Free copies of the Registration Statement and the Joint Proxy Statement/Prospectus and other documents filed with the SEC can also be obtained by directing a request to Sirius Satellite Radio Inc., 1221 Avenue of the Americas, 36<sup>th</sup> Floor, New York, NY 10020, Attention: Investor Relations or by directing a request to XM Satellite Radio Holdings Inc., 1500 Eckington Place, N.E., Washington, DC 20002, Attention: Investor Relations.*

*Sirius, XM and their respective directors and executive officers and other persons may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding Sirius' directors and executive officers is available in its Annual Report on Form 10-K for the year ended December 31, 2006, which was filed with the SEC on March 1, 2007, and its proxy statement for its 2007 annual meeting of stockholders, which was filed with the SEC on April 23, 2007, and information regarding XM's directors and executive officers is available in XM's Annual Report on Form 10-K, for the year ended December 31, 2006, which was filed with the SEC on March 1, 2007 and its proxy statement for its 2007 annual meeting of stockholders, which was filed with the SEC on April 17, 2007. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, is contained in the Joint Proxy Statement/Prospectus and other relevant materials filed with the SEC.*

6

---

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SIRIUS SATELLITE RADIO INC.

By: /s/ Patrick L. Donnelly

Patrick L. Donnelly  
Executive Vice President, General  
Counsel and Secretary

Dated: November 5, 2007

7

## **EXHIBIT 2**



## The CommLaw Group

HELEIN & MARASHLIAN, LLC  
1483 Chain Bridge Road  
Suite 301  
McLean, Virginia 22101

Telephone: (703) 714-1300  
Facsimile: (703) 714-1330  
E-mail: [mail@CommLawGroup.com](mailto:mail@CommLawGroup.com)  
Website: [www.CommLawGroup.com](http://www.CommLawGroup.com)

Writer's Direct Dial Number  
703-714-1301

Writer's E-mail Address  
[chb@commlawgroup.com](mailto:chb@commlawgroup.com)

October 25, 2007

### VIA ECSF and EMAIL

Ms. Michelle Carey  
Federal Communications Commission  
Room: 8-B201  
445 12th Street SW  
Washington, DC 20554

**Re: MB Docket No. 07-57**

Dear Ms. Carey:

Thank you for meeting with Andrew Lowinger, CEO of US Electronics, and me on October 18<sup>th</sup>, and thank you for your attention to the consumer choice issues raised by the proposed Sirius/XM merger.

We continue to believe that the Commission must specify adherence to open device requirements as a condition of the merger. Otherwise, the inevitable result will be that consumers who want to enjoy the content provided over the valuable public spectrum that the Applicants propose to concentrate in the hands of single network provider will be forced to buy a receiver from that provider or its affiliates. The reduced innovation and increased prices that attend such a contraction of choice are irrefutably well documented in the economic literature and in numerous real world examples.

To illuminate the impact on consumers, as discussed in our meeting, US Electronics believes that the Commission's decision-making process would be substantially aided if additional relevant information were available to the Commission.

Accordingly, USE urges that the Commission issue a Request for Additional Information to the Transfer Applicants, seeking the following information for the time period, where relevant to the response, 2001 through 2007, inclusive:

1. Each type of business arrangements used to provide satellite radio receivers to subscribers.
2. Each company that manufactures and/or manufactured satellite radio receivers identifying specifically, the time period that each receiver was manufactured, products currently in development by each manufacturer and reasons why former manufacturing partners no longer produce receivers.
3. Each distributor used to distribute satellite radio receivers to retail outlets and/or to auto manufacturers, identifying the models available from each sorted by year, products currently in development and reasons why former distribution partners ceased these operations.
4. Each company responsible for the design and/or development of each satellite radio receiver offered to consumers and the costs of these activities.
5. With respect to each year for which a decline in the number of distributors or licensees is reflected in the responsive data, the reason for such decline.
6. The names of distributors that have or had structural affiliations with each of the Applicants.
7. Each copy of Sirius' contracts/agreements with Directed Electronics, Inc. and all documents relating to the pending renewal or extension of this agreement.
8. Each copy of XM's contracts/agreements with Audiovox and any other currently licensed distributors including documents that relate to any new agreements, renewals or extensions currently in negotiation.
9. Each copy of Sirius' contracts/agreements with suppliers/manufacturers and any documents that relate to an alteration, separation, cancellation or voiding of any agreement.
10. Notice of any disputes with licensed manufacturers and licensed distributors including current monies owed to each.
11. The number of complaints received by each Applicant from complainants in each of the following categories, together with an explanation of the top five types of complaints heard from each category:
  - a. Consumers
  - b. Retailers
  - c. Distributors
  - d. Licensees
12. An explanation of structural and behavioral protections in place to ensure continued consumer choice as to receivers compatible with each Applicant's individual or combined network or programming options."

13. An explanation of criteria and processes employed to determine whether and to whom licenses are granted by each Applicant for the manufacture and distribution of receivers.
14. All documents relating to the comprehensive compliance plan approved by Sirius' Board of Directors in response to the FCC violations.
15. For each year from 2005 to date, provide the number of complaints from consumers about satellite radio receiver performance, pricing, support, repair and/or replacement.
16. The number of satellite radio receivers repaired and/or replaced.
17. The savings realized by technological advancements, design, engineering or manufacturing efficiencies and records of how these savings were passed on to consumers.

We believe that each of these requests may be posed in the form of a request for existing responsive documents and will not be unduly burdensome to the Applicants. Further, each of these requests is narrowly tailored to specific issues that have been raised in the record, but to which the Applicants have not responded. Moreover, these requests focus on facts that are in the exclusive possession and control of the Applicants. Given that logic, history, precedent and public perception and experience support the concerns about the public harm that is caused by a vertical monopoly, the Commission is reasonably grounded in seeking the additional information to which these requests are directed.

Thank you for your attention to the consumer impact concerns raised by the merger. We stand ready to assist.

Respectfully submitted,

*Charles H. Helein (sae)*

Charles H. Helein  
Counsel for U.S. Electronics, Inc.

Helein & Marashlian, LLC  
1483 Chain Bridge Road, Suite 301  
McLean, VA 22101  
703-714-1301  
703-714-1330 Fax  
chh@commlawgroup.com