



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
Website: www.CommLawGroup.com

Writer's Direct Dial Number
703-714-1301

Writer's E-mail Address
chh@commlawgroup.com

November 21, 2007

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 07-57

Dear Ms. Dortch:

On November 20, 2007, an ex parte meeting was held with Commissioner Jonathan S. Adelstein and Rudy Brioche, the Commissioner's Legal Advisor for Media Issues concerning issues, identified hereinafter, raised by the pending consolidated application of XM Satellite Radio, Inc. and Sirius Satellite Radio, Inc. ("Applicants") for approval to transfer control of licenses and to merge the two companies into a single satellite radio network. The consolidated application is being considered in Media Bureau Docket No. 07-57.

The meeting was attended by the following representatives of U.S. Electronics, Inc., New York, New York ("USE"): Messrs. Andrew Lowinger, President and CEO, Hon. Donald Riegle, Chairman Government Relations, APCO Worldwide, Inc., Washington, D.C. and the undersigned, Senior Partner, Helein & Marashlian, LLC, McLean, Virginia, communications counsel of record for USE.

In the meeting, USE addressed the developments that have occurred since its last meeting with Commissioner Adelstein and Mr. Brioche on September 25, 2007, including the filings of Petitions to Defer Action and Petitions to Designate for Hearing; the Commission's own November 2, 2007 request for additional information, the highly redacted responses filed by Sirius and the fact that the response filed by XM had not been made publicly available on any FCC site.

USE posed the question how the Commission could possibly consider the public interest factors raised by horizontal monopoly that would be created by the Consolidated Application,

much less the specific issue raised by USE concerning the extension of the horizontal monopoly to the vertical market for access equipment. USE pointed out that the Applicants had ignored this issue failing to make any substantive response to USE's arguments leaving the record devoid of any rebuttal making it reasonable to conclude that the Commission should find that the Applicants had conceded the issue.

USE acknowledged that the Applicants had apparently finally made an effort to respond to the vertical monopoly issue in their Joint Ex Parte Submission filed November 13, 2007. The points were made however that even a cursory reading of the arguments contained in that Joint Ex Parte Submission were based on self-serving speculations, irrelevant legal arguments and on factually erroneous claims. USE pointed out that it will formally address the assertions in the Joint Ex Parte Submission, but was mystified by the Applicants use of such a filing when the arguments made therein address USE's Petition to Designate for Hearing, the Applicants' opposition to which is not due until November 28, 2007.

USE also inquired whether it was known to what extent the vertical monopoly issue it raised was being considered within the Commission and whether its importance to consumers and competition was understood. It was indicated that an inquiry of the merger staff would be made on this, but the issue was understood and considered important by the Commissioner's office.

USE questioned how any action on the Consolidated Application could be considered within the current 180-day decisional clock and that it had concluded that its Petition to Defer would perhaps be answered by the apparent impossibility that any action could be taken within the time remaining given the unsettled nature of the record, the host of disputed material facts, the pending petitions for a hearing and the amount of time that would be needed to examine the redacted and un-redacted responses to the Commission's request for additional information that were filed on the 16th and which have yet to be made available in un-redacted versions pursuant to the original and Second Protective Orders.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is submitted via ECFS for inclusion in the public record of these proceedings, with email copies to those listed below.

Respectfully submitted,

By: Charles H. Helein 
Charles H. Helein
Counsel of Record
for U.S. Electronics, Inc.

cc (via email):

Hon. Jonathan S. Adelstein, Commissioner (jonathan.adelstein@fcc.gov)

Rudy Brioche, Legal Advisor for Media Issues, Office of Commissioner Adelstein
(rudy.brioche@fcc.gov)