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November 28, 2007

VIA ECSF and EMAIL

The Hon. Kevin Martin, Chairman
The Hon. Michael Copps, Commissioner
The Hon. Jonathan Adelstein, Commissioner
The Hon. Deborah Taylor Tate, Commissioner
The Hon. Robert McDowell, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 07-57

Dear Mr. Chairman and Commissioners:

For several months, U.S. Electronics has been contributing to the record in the proposed merger of XM Radio and Sirius Satellite Radio. Our continuing purpose has been to urge the Commission if it is inclined to approve the merger to adopt specific conditions to prevent the severe and evident consumer and competitive harms that will result if the monopoly provider of satellite radio services is allowed to move unfettered to a sole-source manufacturing arrangement. Absent adoption of such conditions, the Commission is urged to deny the merger.

The fact is that the Commission's action to approve the merger, if appropriate conditions are not imposed, will launch not just one monopoly, but two: one, obviously, in the horizontal market for satellite radio services but also another one in the vertical market for distribution of satellite radio receivers to consumers who want to become subscribers.

Based on U.S. Electronics' long experience in the manufacture and distribution of cutting edge consumer electronic components, we have urged that the impact on consumers of these two monopolies together will be higher prices and reduced services and innovation.

Today, I write to call the Commission's attention to the highly relevant recent statements of the Chief Executive Officer of Directed Electronics, Inc. ("DEI"), which remains in the market as a leading provider of Sirius-licensed satellite radio receivers, tightly connected to and favored by Sirius. In a November 8, 2007 call with analysts covering DEI, James Minarik fielded questions concerning DEI's new tougher, more restrictive policies on consumer returns and whether retailers would accept the stricter policies, limiting such returns and enlarging the circumstances in which a consumer is likely to be stuck with a product that he or she does not want. Here is the most relevant part of the exchange, which weaves its way through several places in the attached transcript:

> **Q – Kevin Wenck**: Okay. So it sounds like you don't think you're really going to have any significant sales losses from adopting what may, in fact, be more business-like terms with your [retail] channel.
>
> ***A – James Minarik: Yes. I don't want this to sound wrong, but there's not a lot of places to buy SIRIUS receivers.***

Yet, it does "sound wrong", and for good reason. The contraction in the number of manufacturers and distributors that *already* has been instituted by Sirius, as a duopolist, *already* has empowered a leading, favored, remaining distributor to reduce service levels to consumers by restricting its return policy and forcing retailers to accept the new policy whether they like it or not. If the merger is approved without appropriate conditions, this asymmetric power will be institutionalized as part of the market structure, to the detriment of consumers and competition. Competition disciplines manufacturers and distributors to pay attention to consumers' needs and preferences; the retreat of competition emboldens them to ignore the same.

For all the reasons that U.S. Electronics has previously articulated in the record, we again urge the Commission to require that the merger's approval be conditioned upon the applicants' agreement to an open device policy, to prevent the new dual monopoly from foreclosing the manufacturing and distribution processes from competition.

Respectfully submitted,

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cc: **Michelle Carey** - *Senior Legal Advisor, Media Issues – Office of the Chairman*
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