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December 6, 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:

The attached two letters have been sent to Commissioner McDowell.

Pursuant to Section 1.1206 of the Commission's Rules, this letter and its attachments are submitted via ECFS for inclusion in the public record of these proceedings, with email copies of this cover letter sent 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. Robert M. McDowell, Commissioner
Angela Giancarlo, Legal Advisor, Office of Commissioner McDowell
Cristina Chou Pauze, Legal Advisor, Office of Commissioner McDowell



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December 6, 2007

VIA EMAIL AND FIRST CLASS MAIL

Hon. Robert M. McDowell
Commissioner
Federal Communications Commission
44512th Street, S.W.
Washington, D.C. 20554

Re: XM/Sirius Satellite Radio Proposed Merger – MB Docket 07-57
Merger Conditions to Ensure Open Access

Dear Commissioner Mc Dowell:

U.S. Electronics, Inc. (USE) participation in this proceeding is and has been to demonstrate that the proposed merger of XM and Sirius would not be in the public interest unless conditions are imposed that ensure that there will be open access to the sole surviving satellite radio network. In response to the invitation to submit further writings on its position made at the conclusion of the meeting with the President of USE on October 18, 2007, this letter is the second submission in response to that invitation.

As filed in the record on several different occasions, the conditions USE seeks to have the Commission impose 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 conditions are minimally necessary to ensure consumer choice, favorable pricing, and innovation. Therefore, if the merger is approved the 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, and as more recently applied to cable set-top converters; and importantly,
- Be subject to an independent monitor who will ensure compliance with FCC rules and regulations.

You and your staff's attention to these matters are appreciated. If there are questions, kindly contact the undersigned.

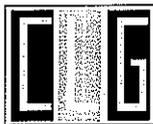
Very truly yours,

Charles H. Helein (sc)

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Hon. Robert M. McDowell
Commissioner
Federal Communications Commission
44512th Street, S.W.
Washington, D.C. 20554

Re: XM/Sirius Satellite Radio Proposed Merger – MB Docket 07-57
Record Support for Open Access to Satellite Radio Network

Dear Commissioner Mc Dowell:

U.S. Electronics, Inc. (USE) participation in this proceeding is and has been to demonstrate that the proposed merger of XM and Sirius would not be in the public interest unless conditions are imposed that ensure that there will be open access to the sole surviving satellite radio network. USE's most recent advocacy of its position to your office was at the meeting with the President of USE, Andrew Lowinger, on October 18, 2007. At the conclusion of that meeting, USE was invited to submit further writings on its position. This letter is the first submission in response to that invitation.

Summarized herein are the record submissions of others that independent of USE's efforts support open access to the network.

ICO Satellite Services G.P. ("ICO") – Comments on Consolidated Application for Authority to Transfer Control, July 9, 2007

ICO is a next-generation satellite communications company, that is developing an advanced hybrid system, combining both satellite and terrestrial communications capabilities, in order to offer wireless voice, data, video, and Internet services on mobile and portable devices. In its comments, ICO urged the Commission -

... to ensure that any approval of the merger is subject to conditions to safeguard the ability of potential competitors to enter the markets in which the Merged Entity would operate ... The ability of other entities to compete with the Merged Entity through new devices or services, however, could be thwarted or impeded by existing or future contractual arrangements that inhibit competition. This includes, for example, exclusive agreements with automobile manufacturers. The Commission should therefore ensure the potential for competition with the Merged Entity (if the merger is approved) by prohibiting the Merged Entity from maintaining or entering into agreements that would have the effect of limiting the ability of other entities to provide competitive products or services. ICO Comments at 2.

Slacker, Inc. - Comments of Slacker Inc., July 9, 2007

Slacker Inc. is a new personal audio service and provided its web site for more detail on its services, www.slacker.com. In its comments, Slacker urged the Commission to -

... impose two conditions assuring that present and future mobile audio technologies have nondiscriminatory access to automobiles. Slacker Comments at 1.

In support of its request for conditions, Slacker pointed out that major auto manufacturers held seats on the Boards of Directors of each of the Applicants and then argued -

The proposed XM-Sirius merger could give the merged company enough economic leverage to obtain or expand exclusive arrangements with car manufacturers. And to the extent car manufacturers also have economic interests in the single satellite radio provider, they will have an incentive to make it difficult to impossible for alternative technologies to be installed in cars. *Id.* at 2.

It then proposed its conditions -

First, the merged company should not be permitted to continue or enter into any exclusive arrangement with any car manufacturer; to the extent XM or Sirius has any current contracts that provide for exclusivity, those exclusivity provisions should be terminated before they may close the merger transaction. Similar conditions have been imposed in analogous circumstances. *See, e.g., In the Matter of Comsat Corporation*, 16 FCC Rcd. 21661 (2001) at ¶ 52 (discussing the prohibition against any exclusive arrangements or management ties between ICO Global Communications and Inmarsat after the former was spun off from Inmarsat). *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, 19 FCC Rcd. 473 (2004), Appendix F (merger condition prohibiting News Corp. from offering any of its national and regional programming services on an exclusive basis to any multichannel video programming distributor). Second, the Commission should not permit car manufacturers to be represented on the board of directors of the newly formed company. *Id.* at 3. (Emphasis in original.)

Blue Sky Services Reply Comment, July 25, 2007

In Blue Sky Services Reply Comment, it cited to the fact that the Applicants had addressed the Commission's interoperability mandate (referred to as the "unified standard") in

their respective 10-K Annual Report filings in 2004 with the Securities and Exchange Commission. The following excerpt from the citation to Sirius' 10-K Annual Report filed March 16, 2004 with the SEC is directly relevant to USE's position on open access.

Both companies expect to work with their automakers and radio manufacturers to integrate the new unified standard and have agreed that future agreements with automakers and radio manufacturers will specify the unified satellite radio standard. Furthermore, we and XM Radio have agreed that future agreements with retail and automotive distribution partners and content providers will be on a non-exclusive basis. Blue Sky Services Reply Comment at 2, citing to Sirius' 10-K of March 16, 2004. (Emphasis added.)

In 2004, both companies not only were then following a policy of dealing with a variety of manufacturers of satellite radio receivers, including those that were to provide interoperable receivers, but also announced their adoption of a policy not to enter into exclusive distributorships for retail, automotive or content satellite radio receivers and products. By 2005, without explanation, the Applicants abandoned this policy. Importantly, although The Applicants have been directly challenged on the record in this proceeding for abandoning their non-exclusive policy, they have failed to provide any response or defense for having done so.

Comments Of Rockwell Collins, Inc., July 9, 2007

Rockwell Collins, Inc. ("Rockwell Collins") is a global company and major manufacturer and integrator of avionics and Global Positioning System ("GPS) equipment for civilian and military customers, one of its products being its Pro Line 21™ avionics system that is capable of receiving and displaying the XM WX Satellite Weather Data Service. Comments at 1. Rockwell Collins expresses concerns closely aligned with those of USE.

The following excerpts show clearly that USE's concerns over open access extend to other devices with the same adverse effects on consumers and competition. First, it is made clear that Rockwell Collins comments concern equipment needed to access the satellite network for aviation and safety purposes.

[Rockwell Collins] comments are limited to the impact of the proposed merger on the supply of satellite-based weather systems ("SBWS") for aviation applications. Id at 2. Emphasis added.)

Like USE if seeks the imposition of conditions if the merger is to be approved.

If the FCC were to approve the proposed merger, important conditions should be imposed in order to limit the potential anticompetitive effects of the merger and to protect the public interest in the development, supply and pricing of this important safety technology. Id. at 2.

It has confronted the use of exclusive dealings in regard to equipment accessing the network and has experienced the disadvantages that such exclusive dealings caused to its ability to compete and to competition in general.

It is Rockwell Collins' understanding that XM has entered into exclusive licenses of its technology with two companies: Garmin International, Inc., ("Garmin") (which, like Rockwell Collins, is an integrated avionics manufacturer) and Heads Up Technologies,

Inc. (“HUT”) (a satellite radio receiver manufacturer), or their respective subsidiaries. Id. at 3.

XM has been unwilling to enter into a direct license with Rockwell Collins (or, to our knowledge, with any other integrated avionics manufacturers) seeking to compete on a level playing field with Garmin.* Id. at 3

*XM requires Rockwell Collins to acquire XM technology exclusively from HUT. We believe that this requirement has placed Rockwell Collins at a substantial cost disadvantage vis-à-vis Garmin, which is able to deal directly with XM. Id.

As a result, XM and Sirius/WSI now are direct horizontal competitors in the supply of satellite-based weather information services for aviation applications. Id.

It recognizes that the Applicants current duopoly will be converted into a monopoly in total control of services and applications that will extend to down-stream suppliers, i.e., extend the monopoly over the horizontal market to a second or dual monopoly to the vertical market.

Accordingly, XM and Sirius/WSI currently are a duopoly for this service. Id. at 4.

The merger of XM and Sirius will result in a monopoly for satellite-based weather information services for aviation applications. Id.

The elimination of one of the two services would leave avionics manufacturers such as Rockwell Collins, which are seeking to develop and market SBWS, beholden to a single satellite weather information supplier. Competition between the two satellite-based weather information services, as well as competition among down-stream suppliers of SBWS, could be lost as a result of the merger, possibly forever. Id.

It is also recognized that the extension of the merged entity’s monopoly powers will increase prices, harm technological development and deny the public the benefits of better equipment that will increase safety concerns.

That higher SBWS prices caused by a merger would reduce the number of SBWS consumed. A reduction in the number of SBWS consumed – absent a cost competitive substitute – would translate into more aircraft continuing to fly without the safety benefit of effective, near real time weather data. Id. at 5.

The XM and Sirius systems are different, and were the parties to eliminate one of the two services, avionics manufacturers with investments in the technology employed in the eliminated system would face stranded costs. Since these systems both are relatively new, neither has proved itself technologically better than the other through direct competition. Id.

Because of Rockwell Collins concerns, it, like USE, seeks conditions to protect consumers and competition that would establish a “level playing field” among equipment providers.

The merged entity should be required to deal with all companies, like Rockwell Collins and its competitors, who provide equipment that is used by pilots to access these two satellite-based weather services, on a non-exclusive and non-discriminatory basis. The requirement that the merged entity create such a "level playing field" in its dealings with such equipment providers will help to assure that aircraft owners and operators receive the full benefit of fair and even competition among all such equipment providers. Id. at 5-6.

Petition To Deny of the National Association Of Telecommunications Officers and Advisors, (NATOA), July 24, 2007

NATOA members include local government officials and staff members whose responsibility is to "... develop and administer communications policy and the provision of services for the nation's local governments. Comments at 1.

NATOA notes the alleged benefits the Applicants claim will result from the merger – lower prices, more programming choices, and deployment of enhanced technology. Id. at 3. But it is unconvinced that consumers will reap these benefits if the merger is permitted, based on concerns similar to those advanced by USE.

All three of these benefits, however, are contingent on the merged company's actions and are, arguably, unlikely to happen given the absence of competition in the relevant market. Id.

Once free of competitive market pressures, the merged company may have little incentive to invest substantial amounts of money into research and development. Id. at 6.

Without competition, consumers may be left with higher bills for antiquated services and technology. If the proposed merger goes forward, the subsequent company may have little incentive to develop new technologies for consumers, especially with respect to signal receivers. Hardware offerings are important to consumers and without competitive forces to drive development, consumers may languish with outdated models that fail to make use of satellite radio's full potential. Id at 9.

You and your staff's attention to these matters are appreciated. If there are questions, kindly contact the undersigned.

Very truly yours,

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