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VIA EMAIL AND FIRST CLASS MAIL

Hon. Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: XM/Sirius Satellite Radio Proposed Merger – MB Dkt. 07-57
The Adverse Impact of Sole Sourcing on the Automotive Marketplace

Dear Commissioner Mc Dowell:

This is the third submission in response to your request for written submissions on the grounds for U.S. Electronics, Inc.'s (USE's) opposition to the proposed merger of XM and Sirius absent conditions to ensure open access to the sole surviving satellite radio network that would be created. Otherwise, the merger cannot be found to be in the public interest.

USE's ex parte submissions of November 28, 2007 documented the extent to which Sirius's distributor, Directed Electronics, Inc., (DEI) already controls 95% of the retail market for Sirius satellite receivers and is using that sole source position to cut back on providing consumer protections on returns and warranty claims.[1] The harm to the public interest from this move to sole source production would be bad enough outside the context of a merger and by itself a violation of the Commission's open networks policies, dating back to the *Carterfone* decision. But where two licensees seek to merge to create a horizontal service monopoly, thus totally eliminating the incentive of competition to win customers based on device features or pricing, the creation of a second vertical monopoly through the surviving company's sole

[1] *See,* Letters of Charles H. Helein to the Chairman and the Commissioners of the Commission, November 28, 2007.

sourcing arrangement yields merger specific harms that must be mitigated by appropriate conditions. Failing to do so consigns consumers to the whims of a monopolist with no incentive to provide choice, reasonable prices, innovation, or reasonable quality of service with respect to the devices essential to access the network.

The Applicants' ability to control the manufacture and distribution of satellite receivers is not limited to the retail market, but extends as well to the automotive marketplace (often referred to as the OEM market). XM and Sirius competed in the automotive marketplace to obtain exclusive agreements with various automakers. As both companies have moved to sole sourcing, what little competition there was has eroded. With the announcement of the merger, the control over consumer hardware, its pricing and other terms will result in the ability to cross-subsidize subscription prices by manipulating the price of the receivers essential to accessing the network services.

The impact of this ability to cross-subsidize will be felt across a broad spectrum of the automotive marketplace if not the entire marketplace. Today, satellite radio is standard equipment in nearly all car lines including through XM's automotive partnerships with, among others, Toyota, Hyundai, Honda, Nissan, GM, and Subaru.[2] Sirius reports that its service is available in autos manufactured by, among others, Dodge, Ford, Mazda, Mitsubishi, Nissan, Scion, Toyota and VW.[3] In 2006, Sirius announced a long-term deal that calls for all Kia models to include Sirius satellite radio as standard equipment starting in 2008. Every Kia customer will pay for Sirius hardware whether they desire Sirius service or are already a Sirius subscriber with existing hardware. Satellite radio currently is and will increasingly become a service that will broach every level of society regardless of income level. It can be particularly attractive to people living in rural areas where options for terrestrial radio service are limited, and where travel across great distances to urban areas is commonplace. It will hardly benefit automotive consumers to pay an artificially low monthly subscription, if the cost of the installed receiver to obtain that service is made too dear or the options of choice of receiver is "one-size fits all." There is also no benefit to a consumer in being forced to purchase hardware in a new vehicle that they do not want.

Because Sirius and XM already control every single aspect of the manufacturing process and the distribution process, even though they do not manufacture or distribute the receivers themselves, the dual monopoly over both the network and the hardware into which they will merge means that –

* automotive consumers will pay more for their receivers, even if subscription prices are not substantially increased,
* automotive consumers will pay for satellite radio hardware whether they desire satellite radio service or not,
* there will be no competition to discipline attention to product and service quality and reliability will deteriorate,
* product availability will not be based on market demand but on internal corporate interests such as prioritizing product placement in high density-low cost areas, and

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[2] See, XM Satellite Radio Holdings Inc.'s SEC Form 425, November 13, 2007. In this filing, XM states that its services are "available in 140 different vehicle models for 2007."

[3] See, Sirius Satellite Radio Inc.'s SEC Form 425, November 13, 2007. Other automakers (mostly selling high-end models) are listed as well.

* realizing corporate synergies will take priority over maintaining quality standards in customer service, (such as more limited return and warranty policies).

Submitted on behalf of
U.S. Electronics, Inc.

By Charles H. Helein (SC)
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Its Counsel of Record

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