

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**U.S. ELECTRONICS, INC.'S
MOTION TO DESIGNATE AND FOR SUMMARY DECISION**

INTRODUCTION

U.S. Electronics, Inc., (USE), by its attorneys, submits this motion pursuant to 1.45 of the Rules to designate the Consolidated Application for Authority to Transfer Control of Licenses from XM Satellite Radio Holdings Inc., Transferor (XM) to Sirius Satellite Radio Inc., Transferee (Sirius) (collectively, the "Applicants"). On November 9, 2007, USE filed its "Petition of U.S. Electronics, Inc To Designate Application For Hearing" ("Designation Petition").¹ An opposition to USE's Designation Petition was due on or before November 27, 2007.² Pursuant to Rule 1.47 (b) "... service of any document filed with the Commission is required on or before the day on which the document is filed." Under 1.47 (c) documents served are to be served "... upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address." No service was made as required by Rule

¹ See, FCC ECFS Confirmation Number 2007119516266 in this Docket.
² Rules 1.45(b) and 1.4 (g)-(i).

1.47 on November 27, 2007, nor has any service been made to date of any opposition to USE's Designation Petition. The Designation Petition is therefore unopposed and should be granted forthwith.

The procedural infirmity of the Applicants is not the sole reason this motion needs to be granted. The Communications Act expressly requires that -

"If ... a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in ... subsection (a) [of 309], it shall formally designate the application for hearing ..." 47 USC 309(e).

Subsection 309(a) requires the Commission to determine whether the "public interest, convenience and necessity will be served by the granting of such application [i.e., an application to which 47 USC 308 applies]. 47 USC 308 applies in general to station licenses. However, 47 USC 310(d) provides that -

"No ... station license, or any rights there under, shall be transferred, assigned, or disposed of in any manner... except upon application to the Commission and upon a finding by the Commission that the public interest, convenience and necessity will be served thereby. And such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 for the ... license ..."

Read together, these provisions make clear that the Consolidated Application must be designated for hearing.

In addition, in its Designation Petition, USE set forth numerous questions of fact that are both substantial and material, but under the express terms of Section 309(e), only one such fact requires that "the Commission ... shall formally designate the application for hearing." By not opposing the Designation Petition, a finding must be made that the Applicants have conceded

that far more than one substantial and material factual issue is in dispute that must be determined at hearing.³

In licensing broadcast stations, an analog to Applicants' radio services, an application must be set for hearing in the following circumstances. Section 73.3591 provides that:

" ... in the case of any application for an instrument of authorization, ... the FCC will make the grant if it finds (on the basis of the application, the pleadings filed or other matters which it may officially notice) that the application presents no substantial and material question of fact and meets the following requirements: ... (2) The applicant is legally, technically, financially, and otherwise qualified; (3) The applicant is not in violation of provisions of law, the FCC rules, or established policies of the FCC; and (4) a grant of the application would otherwise serve the public interest, convenience and necessity.

Applicants sole sourcing of satellite receivers are alleged to violate the long standing open access policies of the Commission. Importantly, the Applicants have not denied this. The Commission cannot grant the Consolidated Application on this ground alone.

Further, the Commission's primary duty, the purpose for which Congress invested the Commission with the authority it has, is for the -

"purpose of regulating interstate ... commerce in communication ... so as to make available insofar as possible, to all people of the United States ... a ... Nation-wide radio communication service with adequate facilities at reasonable charges ..." 47 USE 151.

This broad mandate is complemented by Congress' expression of national communications policy in the Act -

It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person ... who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest. 47 USC 157.

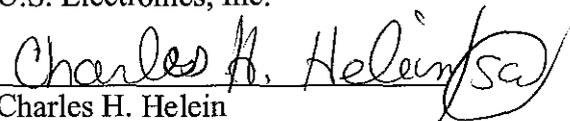
³ Conversely, the Commission may determine that the facts as presented by USE in the Designation Petition being unopposed are true requiring the Commission to make its decision based on those un-refuted facts. Rule 1.251 expressly provides for a summary decision where prior to the commencement of a hearing it is shown that "there is no genuine issue of material fact for determination at the hearing."

A closed satellite radio network inhibits the establishment of a “Nation-wide [satellite] radio communication service with adequate facilities at reasonable charges” and frustrates the “policy of the United States to encourage the provision of new technologies and services to the public.” At a minimum, under 47 USC 157, the Applicants “have the burden to demonstrate that [applying the open access policies of the Commission] is inconsistent with the public interest.” But the Applicants have not done so. They have not even responded to USE’s advocacy and showings of the need for open access to the satellite radio network now and in the future.

Given the foregoing, USE submits that on the record before it, the Commission must grant this motion and designate the Consolidated Application for hearing and thereafter issue a summary decision imposing the conditions proposed by USE that will ensure the application and implementation of the open access policies of the Commission to satellite radio now and in the future.

Respectfully submitted,
U.S. Electronics, Inc.

By


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CERTIFICATE OF SERVICE

I, Sherry A. Reese, hereby certify that, on this the 12th day of December, 2007, copies of the foregoing, U.S. Electronics, Inc.'s Motion to Designate and for Summary Decision were delivered via U.S. first class mail, postage prepaid to the following:

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And were delivered via electronic mail to the following:

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