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January 4, 2008

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

Re: Docket No. 07-57

Dear Ms. Dortch:

On January 3, 2008, Andrew Lowinger, Chief Executive Officer of U.S. Electronics, Senator Don Riegle of APCO Worldwide and I met with Commissioner Copps and his advisor, Rick Chessen. Mr. Lowinger discussed USE's concerns, expressed for many months in the record, that the merger, if approved without an appropriate open device condition, will lead to monopolization of the vertical market for satellite radio receivers. This will harm consumers by eliminating not only competition as to price, but, equally importantly, competition as to quality, customer service and innovation.

Mr. Lowinger reviewed the evolution of the record and underscored that though many months have passed since these concerns were first identified by USE in the record, and though applicants assert otherwise, they have never provided a substantive response to USE's concerns about harm to consumers and competition. Instead, he reported to the Commissioner, applicants have asserted in a conclusory fashion, erroneously in USE's view, that there is nothing wrong with a vertical monopoly in consumer devices, and that the law leaves them free to erect such a monopoly. Mr. Lowinger urged that the overlay of a vertical monopoly on top of the horizontal monopoly that applicants seek is not contemplated by the precedents and in any event cannot meet the public interest standard that the Commission is required to evaluate in connection with the merger.

Commissioner Copps referred to the *Carterfone* doctrine, and asked how USE's proposed open device condition might be adapted to work in the satellite radio receiver market. Mr. Lowinger reviewed the evolution of the market for the manufacture and distribution of satellite radio receivers and reported that until applicants took action to arrogate to themselves control of decisions about manufacturing and distribution, there were numerous licensing deals between Sirius and XM Radio on the one hand, and a plethora of companies on the other.

In further discussion and in fielding questions, Mr. Lowinger explained that open and fair licensing under terms governed by independent product testing pursuant to published standards would work to ensure openness and consumer choice in the post-merger satellite receiver market. We urged that applicants can comply with an open device condition and at the same time adequately protect the security of their intellectual property, the integrity and encryption of their signal, and the quality of the consumer experience. We emphasized that applicants' protests that security and quality protection are incompatible with an open device condition are red herrings.

We committed to work with Commissioner Copps' staff to supply additional information about how an open device condition could be smoothly implemented in the satellite radio receiver market to preserve consumer choice.

Commissioner Copps inquired whether an open device condition, if adopted in the course of consideration of the merger, would make the transaction more compatible with the public interest. Mr. Lowinger indicated that the horizontal monopoly sought by the applicants understandably gives some policymakers pause, and that the open device condition was a minimum step that those voting on the merger should demand.

We left behind a list of the elements of USE's proposed open device condition specifically proposed earlier in the record, and attached hereto.

Respectfully submitted,

//signed//

Kathleen Wallman
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Counsel to U.S. Electronics

Proposed Merger Conditions
Of
U.S. Electronics, Inc.
Media Bureau Docket No. 07-57
Consolidated Application of XM/Sirius

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 *Carterfone* decisions -- as codified in Part 68 of the FCC's Rules, 47 C.F.R. Part 68, as well as the principles established under Section 629 of the Telecommunications Act of 1996, the FCC's implementing rules of Section 629, 76 C.F.R. §1200 et seq., and the Court's affirmation of the FCC's implementing regulations in *Charter Communications Company v. FCC*, 460 F.3d 31 (D.C. Cir. 2006); and importantly,
- Be subject to an independent monitor who will ensure compliance with FCC rules and regulations.

Note: These conditions have been inserted into the record numerous times in ex parte filings and in pleadings such as USE's Petition to Defer filed October 12, 2007.