Kathleen Wallman

Wallman Consulting, LLC
9332 Ramey Lane
Great Falls, VA 22066

April 1, 2008

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *Notice of Ex Parte Communication – Consolidated Applications for Authority to Transfer Control of XM Satellite Radio Holdings Inc. (XM) and Sirius Satellite Radio Inc. (Sirius) (MB Docket No. 07-57)*

Dear Ms. Dortch,

On April 1, 2008 the written ex parte communication below was submitted by the undersigned to Michelle Carey, Chairman Martin's Senior Legal Adviser for Media Issues. Courtesy copies were also sent to Rich Chessen, Senior Legal Advisor and Media Advisor, Commissioner Copps, Rudy Brioche, Legal Advisor for Media Issues, Commissioner Adelstein, Amy Blankenship, Legal Advisor, Commissioner Tate, Cristina Chou Pauzé, Legal Advisor, Media, Commissioner McDowell, and Monica Desai, Media Bureau Chief. Should you have any question please contact the undersigned.

Yours very truly,

Kathleen Wallman

Kathleen Wallman
Wallman Consulting, LLC
Advisor to U.S. Electronics, Inc.

Kathleen Wallman

Wallman Consulting, LLC
9332 Ramey Lane
Great Falls, VA 22066

April 1, 2008

Michelle Carey, Esq.
Senior Legal Advisor, Media Issues
Office of Chairman Kevin Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Notice of *Ex Parte Communication – Consolidated Applications for Authority to Transfer Control of XM Satellite Radio Holdings Inc. (XM) and Sirius Satellite Radio Inc. (Sirius) (MB Docket No. 07-57)*

Dear Ms. Carey,

Thank you for meeting with me and Cameron McAlpine on behalf of U.S. Electronics, Inc. ("USE") last week. You asked during that meeting whether others had joined USE in advocating the open device condition that USE proposed in the record on the pending merger. We replied that several public interest advocates and business interests have supported or commented favorably on the 'open access' condition in recent filings with the FCC, including: Public Knowledge, Media Access Project and New America Foundation, National Association of Telecommunications Officers and Advisors, iBiquity Digital Radio, and the HD Radio Alliance.

In further response to your question concerning support for the open device condition, I am attaching three writings that have appeared over the past few days.

The Los Angeles Times

In an editorial published on March 31, 2008, the Los Angeles Times urged that:

> It's also reasonable for the FCC, which has the final say over mergers by license holders, to impose conditions designed to promote innovation and the public interest…the FCC should require the same kind of openness from XM and Sirius as it has started demanding from some wireless companies. It should direct the merged company to open its service to any

> manufacturer wanting to build compatible devices, and then let customers make their own choices.[1]

The editorial is referring to the most recent positive market validation of the open access concept in the 700 MHz C Block auction. Earlier successes as in *Carterfone* and *Hush-A-Phone* are well documented as to the benefits that accrue to consumers and competition with application of the open access concept.

Public Knowledge and Orbitcast Blogs

- In a March 30, 2008 blog posting, Gigi Sohn, President and Co-Founder of Public Knowledge reiterated her organization's support for the open device condition.[2]
- Ryan Seghir, of the satellite radio industry blog "Orbitcast," stated in a March 28, 2008 posting that: "It's my firm belief that the "open device" issue has implications that - in the short term - may not seem very favorable to Sirius-XM (since it's harder to control the supply chain) but in the long term would ultimately help to benefit the companies and their consumers."[3]

In view of the wide and growing support for the open device condition, USE reiterates its readiness to apply its long experience in the consumer electronics manufacturing market in defining implementation criteria. For example, with respect to quality assurance issues, one aspect of the implementation process could involve independent laboratory testing of satellite radio devices so that both Sirius, as the supplier of the receiver chips, and consumers, as users of the devices, can be sure that they operate as they should.

USE also reiterates the necessity of appointing an independent monitor to ensure that any conditions adopted, if the merger is approved, are carried out as mandated by the Commission. The licensees are apparently under investigation by the Commission for noncompliance with past mandates of the Commission; the documents relating to that investigation are the subject of a FOIA request for which USE shortly will seek Commission review. Full disclosure of these documents is essential so that proper ground rules for the monitoring and enforcement of conditions can be framed.

---

[1] *See*: "XM and Sirius Merge," *Los Angeles Times*, (Available at: http://www.latimes.com/news/opinion/la-ed-xm31mar31,0,4846171.story)

[2] *See*: http://www.publicknowledge.org/node/1488;

[3] *See*: http://www.orbitcast.com/archives/open-device-debate-extends-to-sirius-xm.html#more;

Very truly yours,

Kathleen Wallman

Kathleen Wallman
Wallman Consulting, LLC
Advisor to U.S. Electronics, Inc.

cc: Rich Chessen, Senior Legal Advisor and Media Advisor, Commissioner Copps

Rudy Brioche, Legal Advisor for Media Issues, Commissioner Adelstein

Amy Blankenship, Legal Advisor, Commissioner Tate

Cristina Chou Pauzé, Legal Advisor, Media, Commissioner McDowell

Monica Desai, Media Bureau Chief,

Los Angeles Times

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http://www.latimes.com/news/opinion/editorials/la-ed-xm31mar31,0,6729769.story
From the Los Angeles Times

XM and Sirius merge

The approval of the XM and Sirius satellite radio deal makes sense in an age of multiple media choices.

March 31, 2008

The Justice Department's antitrust division, whose job it is to defend us against monopolies, blessed the proposed merger between XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. last week, potentially subjecting more than 17 million listeners to something that looks like, well, a monopoly. The division argued that satellite radio is not a distinct market but instead a small slice of the broader one for audio news and entertainment. That's the right framework to judge the deal because it reflects how consumers measure XM and Sirius -- as an alternative to local radio, the Internet and whatever they can load on their iPods and phones.

Digital technologies are bulldozing the barriers to markets for all forms of media, including newspapers, magazines, television and movies. That's why antitrust officials should take the same expansive approach to defining other media markets as they did with XM and Sirius'. But that doesn't mean the federal government should give media companies, networks and broadcasters a free pass to consolidate. Antitrust officials and the Federal Communications Commission still need to consider the relative power of new competitors versus established sources, and the degree to which the public is being compensated for the use of its assets.

The market for audio entertainment is unique in the extent to which consumers have adopted digital alternatives. They've equipped themselves with more than 140 million iPods, and they're tuning in to online radio by the tens of millions. But local radio broadcasters still have the largest audience by far, and consequently the most powerful voices. Meanwhile, the market for video has been fragmented by the proliferation of cable and satellite networks. Yet content providers that have direct access to a TV set, as opposed to a computer screen or a cellphone, have a significant advantage over those that don't -- for now, at least.

The most powerful incumbents in the video and audio markets are the ones that have enjoyed a huge government subsidy: free, exclusive licenses to the public's airwaves. The supply of those frequencies is finite, and it's reasonable to limit their accumulation by broadcasting chains. It's also reasonable for the FCC, which has the final say over mergers by license holders, to impose conditions designed to promote innovation and the public interest. XM and Sirius have already delivered a financial benefit in return for their licenses -- they paid $173 million for them -- and they've pledged to offer more-affordable packages of their service. Nevertheless, the FCC should require the same kind of openness from XM and Sirius as it has started demanding from some wireless companies. It should direct the merged company to open its service to any manufacturer wanting to build compatible devices, and then let customers make their own choices.

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XM-Sirius Merger Banal-ysis

By Gigi Sohn on March 30, 2008 - 10:02pm

As has been well documented, Public Knowledge did not take a position on the merits of the antitrust law issues arising out of the XM-Sirius merger. But one need not be an antitrust expert to be a bit shocked at last week's perfunctory three-page decision by the Department of Justice approving the merger. After over a year of deliberation, the Department concluded that the merger would not lessen competition and that the parties could not profitably increase prices because 1) the parties did not compete with each other in important market segments; 2) there are alternative services available to consumers and technological change is expected to make those alternatives increasingly attractive; and 3) efficiencies are likely to flow from the merger that could benefit consumers.

Now these might be very reasonable conclusions supported by the evidence presented to the Department. But we will never know, because the decision is nothing more than a string of conclusions couched as "analysis." The Department states on a number of occasions that "the evidence demonstrates…," or "[d]ata analyzed by the Department shows…." without the slightest mention of what that evidence or data might be. We are just supposed to take their word for it. Given the intense opposition to this merger

About the Author

Gigi Sohn

Gigi Sohn is an internationally known communications attorney. In September 2001, she founded Public Knowledge with Laurie Racine (then President of the Center for the Public Domain) and activist/author David Bollier.

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by broadcasters, consumer groups and others, wasn't the public owed more than this?

In particular, one conclusion the Department reached had me shaking my head. It found that there is no competition between the companies for existing subscribers because

> satellite radio equipment sold by each company is customized to each network and will not function with the other service. XM and Sirius made some efforts to develop an interoperable radio capable of receiving both sets of satellite signals. Depending on how such a radio could be configured, it could enable consumers to switch between providers without incurring the costs of new equipment. The [DoJ's] investigation revealed, however, that no such interoperable radio is on the market and that such a radio likely would not be introduced in the near term.

Recall that one of the arguments made *against* this merger was that the companies had promised to develop and market an interoperable radio, but to this day have not done so. So in essence, the Justice Department has *rewarded* the companies for failing to keep their promise. This is perverse.

Given that the FCC is unlikely to reject the merger in the face of the DoJ's approval, the merger conditions that PK proposed become all the more critical to ensure that consumers are protected. Specifically, the condition that

> the new company should make the technical specifications of its devices and network open and available to allow device manufacturers to develop, and consumers to use, any device they choose without interference. Pursuant to the Commission rules, these devices must be certified by the FCC for receiving signals on the frequencies licensed to the merged entity and be subject to a minimum "do-no-harm" requirement

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would ensure greater competition in satellite radios by eliminating the exclusive deals that the companies now have with device manufacturers, but would likely also lead to the development of that long-promised but elusive interoperable radio.

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Reading List

- CDT: Policy Beta
- Susan Crawford blog
- Cybertelecom
- EFF: DeepLinks
- Electronic Retailer Blog (ERA)
- IPac Blog
- KEI Policy Blogs: WIPO Casting Treaty
- Lawrence Lessig
- On the Commons.org
- Open Access News
- SIVACRACY.NET
- Jon Taplin's Blog
- The Technology Liberation Front
- Tim Wu: What's New

Organizations

- Alliance for Taxpayer Access
- Center for Democracy & Technology
- Center for Digital Democracy
- Creative Commons
- Digital Freedom Campaign
- Electronic Frontier Foundation
- Fair Use Network
- Free Press
- Free Software Foundation
- FreeCulture.org
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"Open Device" debate extends to Sirius, XM

Friday, March 28, 2008 at 4:00 PM 49 comments

Tags: FCC, Merger, Sirius, US Electronics, XM

Now that the onus of responsibility for the merger between Sirius and XM has landed on the steps of the FCC, the focus now turns to the various "public interest" concessions that could be imposed to allow the marriage to pass.

Up to this point, the most vocal of opponents - such as **Georgetown Partners and Clear Channel** - have directed their arguments toward the divestiture of spectrum. Personally, I've always favored Public Knowledge's suggestion that Sirius-XM should make 5% of its channel capacity available to non-commercial programming over which it has no editorial control. (I can only hope the Commission would hold the same reasonable opinion.)

But there's a separate argument that has recently come to light. One that is just as important as the control of spectrum - that of **the "open device" principle**.

It's not exactly a new issue, simply one that has never received as much attention as divvying up broadcast infrastructure. Indeed, Public Knowledge has even suggested the "open device" principle in several of its filings, as has the Media Access Project and several others.

But now a filing published today with the FCC indicates that the "open device" argument has taken center stage.

The filing reveals that Kathleen Wallman and Cameron McAlpine, on behalf of U.S. Electronics, met with Michelle Carey, Senior Legal Advisor, Media Issues to FCC Chairman Kevin Martin on Wednesday. You might recall that U.S. Electronics (USE) is the company **that filed suit** against **Sirius Satellite Radio** Inc. in dispute to losing its device contract with the satellite radio provider.

But this issue extends beyond just the sour grapes that USE might have against Sirius (though I do believe it originated from the contract dispute... so those grapes are still mighty sour).

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- Mel Karmazin's triumph

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Even with satellite radio, do you still buy/download MP3s?

- Yes, I buy digital music on iTunes
- Yes, I buy digital music on another service (AmazonMP3, etc)

I had the opportunity to speak with Kathleen and Cameron prior to their meeting at the FCC. It was an interesting conversation, but I had entered into it already holding an opinion: "open access" for devices is absolutely a good thing, both for consumers and the companies. This isn't just from the satellite radio standpoint - take the recent 700mhz auction, and the fact that the C-block of spectrum will allow consumers to be able to utilize any wireless device they wish - partially **thanks to Google** .

It's my firm belief that the "open device" issue has implications that - in the short term - may not seem very favorable to Sirius-XM (since it's harder to control the supply chain) but in the long term would ultimately help to benefit the companies and their consumers.

But what does "open device access" mean? Public Knowledge puts it best:

> "The new company should make the technical specifications of its devices and network open and available to allow device manufacturers to develop, and consumers to use, any device they choose without interference. Pursuant to Commission rules, these devices must be certified by the FCC for receiving signals on the frequencies licensed to the merged entity and be subject to a minimum 'do-no-harm' requirement."

In short, this condition would allow any manufacturer to develop satellite radio receivers - as long as they're "up to spec" - and essentially lets consumers choose whatever device they prefer to use to connect to satellite radio networks.

Now don't get me wrong, of course I believe that U.S. Electronics is a disgruntled former partner and is looking for a way back in. I even posed that question to Ms. Wallman, but she claims she has no involvement with the argument between USE and Sirius. Her focus is on the open device access provision (and I believe her). The company, admittedly, seems to make no secret of the fact that it wants back in to the satellite radio market. Can't blame them, there's gold in them hills.

But let's separate ourselves from the ulterior motives behind USE's request for a moment. The concept of allowing any device manufacturer to access the (eventually) combined Sirius-XM network seems like a no-brainer to me.

The company points that FCC Commissioner Michael Copps himself said that, "fax machines and computer modems are direct descendants of [the 'open access'] principle." And that FCC Chairman Kevin Martin said, "Competition in the manufacturing and distribution of consumer devices has always led to innovation, lower price and higher quality."

They point to the *Hush-A-Phone* and *Carterfone* decisions, which paved the way for third-party devices to operate on the then monopolistic AT&T network. (If you're not familiar with these cases, they're really quite interesting, read up on them **here** and **here** . The Carterfone Decision ultimately led to numerous innovations such as answering machines, fax machines, cordless phones, computer modems and the early, dialup Internet.)

While from an idealogical standpoint, these sound great, let's look at it from a business standpoint. Show me the money, right? The fact of the matter is that the retail market is looking **pretty anemic** as of late, no matter how much NPD is becoming **less relevant** to the greater picture. **Open device access could be the boon to spur innovation, leading to new devices that would re-inspire consumer interest.**

Sirius and XM may argue that they subsidize the cost of building those radios, so why should they give up any potential profits derived from those devices? But with open device rules and specifications, the R&D costs are offloaded to other manufacturers who want to join the fray - ultimately leaving the product development costs to others to incur. Keeping the retail process in its own silo is a shrinking piece of pie at this point, and the true profits are seen from the subscriptions anyway.

As media companies, they should be concerned with one thing and one thing only: *enabling* everyone to experience that media. The benefit to Sirius-XM is that in order to experience that media, you need to pay for it. So why be the gatekeeper? Why be the bottleneck?

Yes, but I download my music for free (P2P)
No, I just record satellite radio on my Stiletto/Inno (or other device)
No, I buy CDs instead

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In the end, it's ultimately about improving the consumer's experience. MP3 players with Satellite Radio embedded. Clock radios that incorporate Satellite Radio, Internet Radio and HD Radio all in one. Cell phones with uses of satellite radio that extend beyond what Sirius and XM are capable of imagining.

And in pursuing that end, Sirius and XM would ultimately make out the winners.

[**View the FCC Filing** (PDF)]

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Comments

FCC SHOULD BE DONE BY NOW, IT'S BEEN OVER A YEAR, WTF ARE THEY RETARDED, THIS IS JUST RADIO, IT'S NOT LIKE IT'S THE INTERNET, IT'S THE DYING RADIO.

Posted by: Anonymous Coward | **March 28, 2008 4:22 PM**

That would seem to be great for Consumers. Imagine having a Zune or an Ipod that is satellite radio compatible? However, if this is the case Sirius and Xm should be allowed to have 1 distinct feature that keeps they're recievers more dissirable to the consumer, like a push to buy button.

Posted by: mitchman79k | **March 28, 2008 4:25 PM**

Dish and Direct do not need to share or have anything free.

The equipment used must be secure and under control of the Satellite company.
It would not be fair to have to share any spwectrum with anybody.
Sirius and XM paid for that long ago when the risk was great and so much money was needed to get things going. Stockholders invested in Sirius and XM not in another company that now wants to come in after all the hard work is done.

If the Gov wants some free channels it is Sirius that should do it not another company getting a free ride. Next everybody will want some channels were do you draw the line.

So far Sirius and XM have not made money and giving away anything from them would be wrong and not fair to the stockholders that have invested at risk on something new that had to be invented along the way.

Posted by: John | **March 28, 2008 4:44 PM**

I am against this because Apple will just add SIRIUS/XM on the ipod and not have to pay anybody for it!!

Posted by: FREE_RADIOS | **March 28, 2008 4:50 PM**

I'm of the opinion that these third party manufacturers are suspecting that if the merged company gets sold and it then becomes an advertising funded medium that they will already in the pool to sell satrad receivers immediately. With price

competition the satrad receivers could start selling hotcakes even if they still had to pay $6.99 a month for the service, but free radio would make it a slam dunk. It would be bigger than the FM receiver migration back in the 60's. Keep in mind that these guys are acting like they are playing chess and planning several moves ahead. Just my opinion.

Posted by: Paul | **March 28, 2008 4:50 PM**

Is anybody aware of the partnership between Clear Channel and Microsoft concerning HD RADIOS??

Posted by: **FREE_RADIOS** | **March 28, 2008 4:53 PM**

HD RADIO is a scam and the FCC better not allow it onto satellite radios!!!

Posted by: **FREE_RADIOS** | **March 28, 2008 4:55 PM**

Be aware that if "OPEN ACCESS" is granted satellite radio no longer will be able to make money from the receivers themselves!!! The manufacturers will be able to sell them cheaper thus cutting SIRI/XM out of the market!!!

This would further hurt satellite radio further and force a possible bankruptcy!!! How would that help the consumer?? It would help the NAB but the NAB has been the DEVIL in the merger!!!

Posted by: FREE_RADIOS | **March 28, 2008 4:59 PM**

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thanks for raising this issue - sounds like this would be good for consumers, and sirius...I wonder why they would oppose it?

Also, in response to FREE_RADIO, i don't think this would mean that apple could just give people free access to sirius content, it would probably just give them the option of a satellite capable ipod, that someone would then have to pay sirius for service on...which would be pretty cool.

Posted by: Tim | **March 28, 2008 5:02 PM**

Conceptually I agree with the open device argument. If there really were manfacturers out there that wuold build satelite radio receivers with no subsidies, that would compete with Sirius/XM receivers that must be subsidized to sell, then the merged company should be eager to embrace open devices. They could certainly charge for the technology, if anyone actually wanted to manufacture them and sell them. They could make devices a profit center rather than cost center. Doubt that's the case anytime soon, but maybe in the future.

There are two issues that I can think of that Sirius/XM would have - 1) controlling the quality of the devices -- Sirius and XM both are selling a service, if the deivce doesn't deliver a quality service experience then it hurts their ability to control that experience. When a customer has a problem with reception -- do they call the manufacturer or call Sirius/XM. That is a big issue.

2) Controlling activation. This one is probably a little easier, as I believe Sirius/XM would still control development of the chip that handles the codec and security -- but its not clear from the filings that I've seen. Sirius and XM have to have control of the security and can not make that "open" as it would invite abuse and destroy the business model.

Posted by: Jack | **March 28, 2008 5:06 PM**

It would be great if companies like Apple, Sony, Yamaha, Panasonic, RCA, Philips, etc. could manufacture satellite radio receivers. The more companies they'd have making these, they'll be competing for consumers to buy them, which will make the equipment much more affordable to buy, which means more subscribers to satellite radio. This would be win-win for both consumers and the merged company, which is what this merger is about.

Posted by: Anonymous Coward | **March 28, 2008 5:17 PM**

"possible bankruptcy" the sat radio providers are already there this "merger"

MONOPOLY is a last ditch effort, what the sat radio fanboy's don't understand is the consumer should not be the ones to excuse Sirius's and xm's previous agreements with the fcc, nor should consumers pay the price of granting a sat radio MONOPOLY with higher prices, no choices, and no competition. This whole "merger" is a J O K E not one part of it is pro-consumer.

Posted by: Anonymous Coward | **March 28, 2008 5:25 PM**

I am sure that there are capable hackers who could tap into satrad's signal without paying for it. It these guys can get into the DOD's computer, breaking satrad receiver code will be a snap. Nothing is 100% safe in this world. As to a royalty paid to XM-Sirius for each non name brand receiver sold, forget about it as the Chinese have been doing that piracy crap for years. I hope that the satrad companies have other means of verifying a paying customer otherwise it could become another satellite TV piracy fiasco. "A LOCK ONLY KEEPS AN HONEST MAN HONEST!"

In the end this all makes the subscription model difficult to maintain. Sort of like the AOL monthly fee service that eventually became a free service paid by advertising.

Posted by: Paul | **March 28, 2008 5:34 PM**

I do not see any problem with this, in fact its a boon. Sat rad should not be in the subsidy business, they should be in the broadcast and content business. Let others make the radios, the more radios the more exposure and the more subscriptions.

There is a little company named Microsoft that realized early on the money was not in the hardware but in the software, or the "fuel" that made the hardware run. Same here, a sat rad radio will not work unless it has a subscription, the "fuel" to make it work. The more hardware out there competing at lower and lower prices and better and better equipment, the more subscriptions and the more chance XM/SIRI have to survive and thrive.

Ariel

Posted by: Arielsquarefour | **March 28, 2008 5:44 PM**

Disclosure: I work with U.S. Electronics on their FCC position and am cited in this article.

Nobody's saying that Sirius should have to give their chip away for free. The open device idea only requires that the chip be made available to all willing manufacturers on reasonable and non-discriminatory terms. Sirius can subsidize the chip or not, that's fine either way, but under the open device condition they'd have to do whatever they do evenhandedly. Verizon just paid billions for spectrum that will be subject to an open device condition, so just because the network provider has an input cost doesn't mean an open device condition isn't still in the public interest. Also, manufacturers can be required to operate under non-disclosure agreements and take other precautionary steps to maintain the integrity of Sirius's IP and encryption. That's only fair.

Last thing, but important: Any condition whether it's the a la carte condition Sirius has already agreed to or this open device condition necessitates the appointment of an independent monitor to make sure that the public interest gets attended to in the long run.

Posted by: Kathleen Wallman | **March 28, 2008 5:50 PM**

EVEN IF SIRIUS/XM RADIO MERGES, THEY CANNOT COMPETE WITH TERRESTRIAL BECAUSE TERRESTRIAL IS FREE.

WHO WANTS TO LISTEN TO NBA, NFL, MLB?? PEOPLE WATCH IT ON TV, ONLY RETARDS WHO DON'T HAVE A TV LISTENS TO LIVE ACTION. EVEN MORE PATHETIC, WHO WANTS TO LISTEN TO GOLF??

YOU GET THE SAME MUSIC ON FREE RADIO, SIRI/XM RADIO STATIONS LOOP THE SAME SONGS OVER AND OVER AGAIN. WTF IS THE DIFFERENCE? NO COMMERCIALS, OH THAT'S GREAT, I RATHER POP IN A CD OR MP3

Posted by: Anonymous Coward | **March 28, 2008 6:04 PM**

EVEN IF SIRIUS/XM RADIO MERGES, THEY CANNOT COMPETE WITH TERRESTRIAL BECAUSE TERRESTRIAL IS FREE.

WHO WANTS TO LISTEN TO NBA, NFL, MLB?? PEOPLE WATCH IT ON TV, ONLY RETARDS WHO DON'T HAVE A TV LISTENS TO LIVE ACTION. EVEN MORE PATHETIC, WHO WANTS TO LISTEN TO GOLF??

YOU GET THE SAME MUSIC ON FREE RADIO, SIRI/XM RADIO STATIONS LOOP THE SAME SONGS OVER AND OVER AGAIN. WTF IS THE DIFFERENCE? NO COMMERCIALS, OH THAT'S GREAT, I RATHER POP IN A CD OR MP3

Your solution is simple. Don't subscribe.

Over 19 million and counting do .

Posted by: RJ | **March 28, 2008 6:09 PM**

THE DRAW OF SATELLITE RADIO IS THAT I DONT HAVE TO DO ANYWORK TO HEAR WHAT I WANT TO LISTEN TOO!!! That's right, I am lazy! I dont want to have to download or pick the song I want to listen to, out of a playlisr. Let a DJ do that. While driving it's more important to be watching the road anyways.

Posted by: mitchman79k | **March 28, 2008 6:59 PM**

This "Open Device" push is just a way for USE to get their names in the news, that's it. The simple fact it, if you wanted to build an XM or Sirius enabled product today and told Siruis or XM that you wanted to do so and would not want any Subsidy in return, they would let you do it in a heartbeat provided you could demonstrate the technical capability and had a business plan so as to not tarnish the brand.

So, USE, there must be some bad blood between the 2 companies if they won't let you do it.

Look around. XM is trying to get their product into as many things as they can. that's the whole push behind their Mini-Tuner. It allows anyone to build a product.

I have not counted, but I bet if you did, there are at least 20-30 other manufacturer's selling XM Radio's or XM Capable Radio's.

So, the "Open Device" thing is a no brainer. XM and Sirius would sign up for that in a minute.

Posted by: XMRox | **March 28, 2008 7:07 PM**

BTW, if ANYONE thinks XM or Sirius is making money on the sale of retail hardware, you are sorely mistaken. The only exception MAY be the higher end devices like INNO or Stiletto types. Every one of these retail radios carries a subsidy back to the manufacturer and/or retailer. Why do you think analysts care so much about their SAC (Subscriber aqusition costs)? What do you think SAC consists of?

If XM and Sirius could "Flood the Market" with satellite radios and not pay a subsidy and not incur any manufacturing costs, they would have done that 4 years ago. They would not have waited until now to please the FCC.

Do the math on their earnings announcements. Their revenue comes from SUBSCRIPTIONS not selling hardware.

"Open Device" in my opinion is a non-issue for XM/Sirius.

Posted by: XMRox | **March 28, 2008 7:15 PM**

>>>> Nobody's saying that Sirius should have to give their chip away for free. The open device idea only requires that the chip be made available to all willing manufacturers on reasonable and non-discriminatory terms. Sirius can subsidize the chip or not, that's fine either way, but under the open device condition they'd have to do whatever they do evenhandedly. Verizon just paid billions for spectrum that will be subject to an open device condition, so just because the network provider has an input cost doesn't mean an open device condition isn't still in the public interest.

Also, manufacturers can be required to operate under non-disclosure agreements and take other precautionary steps to maintain the integrity of Sirius's IP and encryption. That's only fair.

The obviously simple response is, "Nonsense". However, having given it a little more thought, it is possible to see another side to this.

But the first question that must be answered is, "What is the **public** interest in imposing such a requirement?" It is easy to see USE's interest -- but much more difficult to see how, what amounts to a condemnation of XM/SIRI's property, serves a public interest. Unless there is some compelling public interest/competitive reason for FCC to impose the requirement, why would they do that? Presumably, you believe there is a public interest, so I'm wondering specifically what that is?

Posted by: Stack Pointer | **March 28, 2008 7:18 PM**

Like most of the phonies who have weighed in about the merger, I'm sure these people couldn't give a rat's ass about the public interest.

No one with a profit motive does. That's life.

But what could happen in this scenario, if allowed, is allow a new range of devices that would be created, analogous to the availability of cell phones that are not tied to any carrier (i.e., not subsidized) where one pays a good deal more for the unaffiliated hardware to get what they want.

Speaking for myself, I don't see the attraction there, and haven't paid for a new phone in years thanks to free upgrades Verizon offers me. But adding SatRad to a Blackberry style device, or a full featured Smart Phone, might get an audience. Since it would not be subsidized, though, don't expect any $12.99 giveaways. That's not unfair.

Posted by: Max | **March 28, 2008 7:30 PM**

The radio is in the Chips and what is in the chips is secret and MUST remain that way.
Sirius DOES NOT MAKE MONEY ON MOST RADIOS.
Sirius sells the radios below cost because they are not in the radio business to make money.
Money comes from the subs and ads. It just so happens they need radios so people can listen.

The radio MFG takes the chips that are the radio and ads a case display and maybe memory no big deal.
Making money on the radio is not good for Sirius because it makes the price higher and that is not the way to get more subs.

It would not surprise me that we will see all simple radios free with a one year sub. You have to think that is what is best because Dish and Direct do it that way.

Because Sirius sells the service the radios must be approved by Sirius because a radio that is not good will cause a loss of subs and a bad name for Sirius.

Should it happen that they are forced to give others channels i hope that Sirius is allowed to make as much money from them as they would make if they were running them.

I as a shareholder paid for the design of the radios the satellites ect and it would not be right for shareholders to be forced to give away what they invested in.

Posted by: John | **March 28, 2008 7:45 PM**

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I think it's good for the public interest for the FCC to protect consumers' ability to choose after the merger if it's approved which devices they put in their homes and cars to listen to Sirius coming to them over public spectrum. If the merger is approved, they won't get to choose any longer which provider they use because there'll be only one. Let them choose which device, though, and don't put that at the mercy of the sole service provider. Over the past couple of years, there's been a contraction of suppliers.

Yeah, it seems like Sirius should go for this open device idea so that sat rads are widely available and affordable, but they've told the FCC they're against it. Why? Again, if they want to charge a licensing fee, they could do that, as long as it's evenhanded. There's no condemnation of their IP at all.

Also, there are tons of other places where the open device/open access idea has been hailed as serving the public interest -- like the Carterfone case cited in the main article, and like the recent auction of Upper 700 MHz spectrum. Same here.

Posted by: Kathleen Wallman | **March 28, 2008 7:58 PM**

Kathleen Wallman: " I think it's good for the public interest for the FCC to protect consumers' ability to choose after the merger if it's approved which devices they put in their homes and cars to listen to Sirius coming to them over public spectrum."

Well, than you SO much for "protecting" our interests. Where would the Republic be without people like you? I tell you, there is nothing like hearing an impartial source like you weigh in on a matter so critical to the welfare of the nation.

I am revulsed over the kind of people our system produces.

Posted by: Max | **March 28, 2008 9:32 PM**

I guess I have no major problem with opening up the devices. But it sure seems like a stretch. Yes, its public spectrum, but XM and Sirius paid ALOT of money for it. Why should they continue to pay for it (now in the form of requiring open devices)?

Posted by: rjr | **March 28, 2008 9:40 PM**

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Posted by: Max | **March 28, 2008 9:41 PM**

Remember the XMPCR?

Quite possibly the coolest receiver ever released, yet because the RIAA complained XM pulled it from the market. Given the relationship that XM and Sirius have to maintain with the RIAA, it's not surprising that they pulled a very niche receiver because the RIAA said so.

However, open access to hardware would allow a third party, with no connection to XM/Sirius, to bring out an XMPCR like device. The RIAA would have to sue that manufacturer and XM/Sirius have washed their hands of the matter. And that third party manufacturer would probably have an easier legal defense against the RIAA than XM/Sirius would have, since they have nothing to do with what bits get broadcast over the airwaves.

This also opens the door to radios with fairly easily moddable FM modulators (to get around the FCC restrictions) and so forth.

The fact is that the combination of broadcast company and receiver designer hasn't worked since, what, RCA/NBC?

Posted by: leviramsey | **March 28, 2008 9:58 PM**

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Wallman: Too bad to make it personal. Anyway, it's not just me and not just U.S. Electronics. Others agree as pointed out in the main article. I've disclosed my affiliation; do you have one that's relevant?

Posted by: Anonymous Coward | **March 28, 2008 10:19 PM**

Wallman: This was my post - hit the button prematurely.

Max Well, than you SO much for "protecting" our interests. Where would the Republic be without people like you? I tell you, there is nothing like hearing an impartial source like you weigh in on a matter so critical to the welfare of the nation.

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Posted by: Kathleen Wallman | **March 28, 2008 10:20 PM**

Kathleen,

How do you address the need for Sirius/XM to control the quality of the devices in order to protect the service quality? Is it fair to ask them to subsidize a manufacturer that they deem substandard? Would they be able to designate some manufacturers "approved" and not others? Sirius/XM's product is their service. They both discovered very early in their history they needed better control over the manufacturing and development process in order to insure a satisfactory user experience. How is that accomplished with "open access"?

Would open standard prohibit them from developing and controlling manufacturing their own devices as they essential do today, even though the manufacturing is outsourced? How could you ask them to send subsidized chips to a manufacturer they deemed unsatisfactory and from which they had doubts about the customer experience and the likelihood of a getting a long term subscriber?

Posted by: jack | **March 28, 2008 10:59 PM**

Wallman: "Too bad to make it personal. Anyway, it's not just me and not just U.S. Electronics. Others agree as pointed out in the main article. I've disclosed my affiliation; do you have one that's relevant?"

No I do not. I am a private citizen and an XM subscriber. And as far as "making it personal," your pretense of being the ever helpful soul is the stuff of personal insult, as it presumes a level of stupidity and gullibility on the part of everyone one reading your position.

In your culture, merely disclosing the affiliation absolves you of having to be truthful. In the real world, that doesn't cut it. Are we to believe that this is nothing more than a sorry attempt to affect the outcome of your litigation against Sirius by other means? That's not a personal insult? Please.....

The fact that other people think the open standard is a good idea- and frankly, I am not against it either- is beside the point. The fact that you would present it as being in the 'public interest" is a display of a pathology. Or at least, a very bad act.

That is a decision that will have to be made by Sirius Satellite Radio, Inc., not you, nor should it be a part of any FCC mandate, at least, not at this point. This "concern" over the public welfare seems a mite out of context when a few hundred thousand people may lose their homes, and here you are making a career out of promoting an

"Open" (what a wonderful word) access for a paid subscription radio service. I repeat: our Nation owes you an enormous debt which we doubt will ever be repaid. Kind of like those mortgages.

Every leech and parasite in Washington has latched on to this infinitesimally tiny speck of the available bandwidth medium, trying to leverage everything and anything, tell any lie, misrepresent every issue, and buy off the right people to squeeze what they can out of the merger without the slightest regard to the integrity of the process or the merits of it.

But thanks for disclosing your conflict of interest. That makes everything all right. Doesn't it?

Posted by: Max | **March 28, 2008 11:24 PM**

Lest we forget:

http://www.orbitcast.com/archives/siriusxm-blast-us-electronics-in-fcc-filing.html

Posted by: Max | **March 29, 2008 12:07 AM**

Opening the architecture of the satrad receiver is not wise if XM-Sirius is to remain a subscription service unless constant receiver authorization is in place. Once the genie is out of the bottle it would be tough to get him in. I suspect that XM-Sirius sends out a code which unlocks a receiver that has a particular ID. If somehow the same receiver ID was placed in a few thousand receivers then as long as the original receiver's subscription was maintained then all of the similarly ID'd receivers would stay active. If the original licensed receiver was a life time subscription then you would have thousands of free listeners. I'm sure the Chinese are aware of this and itching to get their hands on the coding. Chips are easily duplicated and those things would flood the market. All this locking (copy protection) stuff was tried with software long ago and it simply doesn't work long term. In the end everything became open, but a trend towards authorization verification began with Windows XP, see below.

When cable TV was analog it was difficult to determine which were the pirated decoding boxes, but once it became digital with two way communication that all stopped. There could only be one of a particular ID number on line at one time. That could become satrad's saving grace. If the receiver could transmit back its ID to the the company then there could be verification of the machine. Microsoft is doing that now with their operating software. Only authorized software is upgradable thus hampering piracy. Maybe electronic verification is what is needed. Could a cell phone tower handle that signal for satrad? It will be interesting as to how this is handled.

Posted by: Paul | **March 29, 2008 12:44 AM**

>> I think it's good for the public interest for the FCC to protect consumers' ability to choose after the merger if it's approved which devices they put in their homes and cars to listen to Sirius coming to them over public spectrum.

I guess I'm really not seeing it. I'm not sure the public is concerned, or has reason to be concerned, with the number of devices available to receive satellite radio. If the merged company decides, for example, to build its own devices going forward, it is totally in THEIR interest to make an array of devices of high quality that are priced to encourage the consumer to purchase them. Thus, having additional suppliers really adds little, if anything, to the marketplace for such devices.

If it could be shown that the open standard would materially benefit consumers, then it is possible someone could weigh the positives against the negative (i.e., depriving the merged company of sole control of its IP). But it would seem that, as in a condemnation of realty, there has to be a strong showing that it is in the public interest, if we are to insist that these companies effectively give up some of their ownership rights with respect to this intellectual property. It is pretty hard to support that case.

It is easy to see how, when XM and SIRI are looking to form a monopoly, they might be called upon to make certain concessions in exchange for the monopoly power they are receiving. And I think FCC should definitely consider requiring concessions.

For example, it is my personal view they should be required to divest themselves of half the spectrum -- though this is obviously draconian (so is giving them a monopoly). Still, there would be a clear public purpose in requiring such a forfeiture. I may be missing something, but it is much more difficult to see the public purpose in requiring an open standard for the receivers, I think.

Posted by: Stack Pointer | **March 29, 2008 1:32 AM**

There's no need to apologize, Stack. You don't see a public interest because it doesn't exisr. If you did see one it would mean either of two things.

1} You're hallucinating
2} You have a severe case of congenital mendacity.

Posted by: Max | **March 29, 2008 10:41 AM**

Why not, I say? If there's effectively only one satrad service, it makes open source kind of preferable, doesn't it? When people hear satrad, they like it and keep it if they can (and at 6-10 bucks per month, it's not a huge expense). I suspect a huge reason people haven't bought the things in '07 is because they didn't know what would happen with the merger; that's clearing up and I bet you'll see an uptick once the FCC stamps its approval.

I also wouldn't be surprised to see the united company build some of these long-term relationships with companies like Apple (XM/SIRI on the Apple TV?), Garmin, maybe even EchoStar (perhaps satrad would get some of that extra spectrum they just bought? And they already have the relationship with Sirius and have $$$ to burn ...). Those companies build hardware as well as software, and again, now that the merger has gone through, they now have the impetus to build those alliances.

But as everyone else has said, it's the programming that'll drive satrad ultimately, and aside from areas like sports and news, I would think the big goal for satrad is to try to find a way to get folks under 30 who now use MySpace and the Internet to pick up their new music to grab a satrad and have it do some of that work for them. Is that generation hopelessly lost to the joys of radio, or is there still a way to catch them? Terrestrial radio doesn't seem to give a damn, so it's up to Mel and company to try to build that market up again ...

Posted by: Edgewater Joe | **March 29, 2008 12:39 PM**

Responding to Jack's post Friday night 3/28/2008 where Jack wrote:
How do you address the need for Sirius/XM to control the quality of the devices in order to protect the service quality? Is it fair to ask them to subsidize a manufacturer that they deem substandard?

Wallman: QA concerns are reasonable to raise and can best be met by agreement to an independent testing regime for devices, which is the kind of independent supervisory and enforcement mechanism that U.S. Electronics had in mind when it talked about this in the record at the FCC. That way, no matter who's producing the units, Sirius and the consumer are assured that they work the way they're supposed to.

Posted by: Kathleen Wallman | **March 30, 2008 10:00 AM**

If I go to the toy store and buy a crystal radio kit should my device have access to the SatRad spectrum? I think so!!!!!!!!!!! Thanks Kathleen for keeping our radio waves open. yech.

Posted by: NorCalMurph | **March 30, 2008 11:31 AM**

Wallman: QA concerns are reasonable to raise and can best be met by agreement to an independent testing regime for devices, which is the kind of independent supervisory and enforcement mechanism that U.S. Electronics had in mind when it talked about this in the record at the FCC. That way, no matter who's producing the units, Sirius and the consumer are assured that they work the way they're supposed to."

It is precisely for people like you that Stephen Colbert came up with the word "truthiness."

BTW, anyone following this thread should access the PDF with XM's and Sirius' response to USE's obnoxious meddling on the link I posted above from the Orbitcast archive. You can add USE to the chorus of crybabies trying to feed on the carcass of this merger.

What a joke.

Posted by: Max | **March 30, 2008 12:11 PM**

Seems the more one reads the more it's proven "crybaby" Max = Joke.

This "merger" is not being done for consumers. With this "merger" Sirius/xm wants to make sat radio a MONOPOLY, raising prices and taking away choice, and competition.

IF the FCC doesn't STOP this MONOPOLY the whole satrad industry will soon become that "carcass" with sat radio fanboys becoming crybabies when the FACTS come out when it's too late.

Posted by: Anonymous Coward | **March 30, 2008 12:36 PM**

Wow!!!! Yon need to be one slow SOB to think that you can come on a Sat. Radio Fan Boy website and can convince anyone that a "Monopoly" in the Satellite Radio Industry will mean higher prices.

Posted by: mitchman79 | **March 30, 2008 3:29 PM**

Really mitchman79? You feel "a "Monopoly" in the Satellite Radio Industry WILL NOT mean higher prices."? a "Monopoly" in the Satellite Radio Industry is pro consumer? a "Monopoly" in the Satellite Radio Industry will mean more choice for consumers? a "Monopoly" in the Satellite Radio Industry will mean the same level of competition which got sat radio to the level it is today?

Not any of those things you accuse of except obviously smarter than blind, satrad fanboy sheep. This "merger" MONOPOLY will damage Sirius/xm, it's not being done for the consumer, it WILL mean higher prices, no choice and no competition in the US satrad industry. Come on fanboy you think consumers will have as much choice in satrad with one company controlling it all instead of 2 seperate companies working hard to do better than the other company?

Satellite Radio Monopoly Proposed
http://blog.hometheatermag.com/markfleischmann/021907satellitemonopoly/

XM-Sirius Merger Update: Price Increases, No Content Mix Yet, Joe Consumer in Danger?
http://gizmodo.com/gadgets/gadgets/xmsirius-merger-update-price-increases-no-content-mix-yet-joe-consumer-in-danger-238107.php

"What's interesting about the proposed merger of the XM and Sirius satellite radio operations is that their licenses, issued by the Federal Communications Commission, specifically prohibit one company from owning both networks. A press release lists benefits of the monopoly as more program choices, advanced tech innovation, enhanced hardware offerings for OEM and retail partners, better financial performance, and more competitiveness. Some of these claims are more credible than others. Will combining the two result in more choices for listeners—or will overlapping programs eventually be cut? How exactly will the removal of competition spur technology? And the big question, of course: Will the FCC provide conclusive proof of incompetence and/or corruption by saying yes to a monopoly and destroying competition in satellite radio? Even before securing its monopoly status, the new company is already talking about price increases, according to a conference call for investors"

A smart consumer is a good consumer and smart consumer are not going to support the MONOPOLY of Sirius/xm, no those actions will be by blind, satrad fanboy sheep, at least till the Sirius/xm satrad MONOPOLY goes belly up.

Posted by: Anonymous Coward | **March 30, 2008 6:24 PM**

AC, you are an agenda driven douche. SATRAD was made to be about the content, if

AC, you are an agenda driven douche. SATRAD was made to be about the content, if prices go up people don't subscribe. Seems simple to me...

Posted by: NorCalMurph | **March 30, 2008 7:25 PM**

NorCalMurph "douche" nothing like posting reality instead of blindly following thinking that consumers will somehow benefit from this satrad "merger" MONOPOLY. No agenda other than pointing out this "merger" MONOPOLY is not at a positive for consumers or the satrad industry which will go deeper into the hole giving consumers high prices, no choice, and no competition.

A smart consumer is a good consumer and smart consumer are not going to support the MONOPOLY of Sirius/xm, no those actions will be by blind, satrad fanboy sheep, at least till the Sirius/xm satrad MONOPOLY goes belly up.

Posted by: Anonymous Coward | **March 30, 2008 7:58 PM**

HD Radio It's time to upgrade!.... and drop the satrad MONOPOLY

http://www.hdradio.com/i/Not%20Regular%2030%20FULL%20-%20ABC%20Warehouse.mp3

http://www.hdradio.com/i/TW633006%20-%20Tweeter.mp3

Posted by: Anonymous Coward | **March 30, 2008 8:07 PM**

Coward: "Seems the more one reads the more it's proven "crybaby" Max = Joke."

This is a thread about a rather small, insignificant company petitioning the FCC to force Sirius Satellite to allow it to make a profit without having to earn it.

If you want to discuss the merits of the merger, my suggestion is to post it in the appropriate place.

Good day.

Posted by: Max | **March 30, 2008 9:02 PM**

Well AC, only time will tell. I for one don't believe prices will go up. The market is just to complex. Oh , I guess the DOJ is on my side!

Posted by: mitchman79k | **March 30, 2008 10:37 PM**

my suggestion is to post "crybaby" Max = Joke."

Posted by: Anonymous Coward | **March 31, 2008 10:20 AM**

Post a comment

(or continue the conversation in the **Orbitcast Forums**)

Name: *(will show as "Anonymous Coward" if empty)*

Email Address: *(will not be displayed)*

URL:

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