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9332 Ramey Lane
Great Falls, VA 22066
April 9, 2008

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

RE: ERRATUM: 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 8, 2008 I caused to be filed an *ex parte* communication in the above referenced docket. The attached document corrects the following errors:

1. Footnote 1 should have read “*See: “XM and Sirius Merge,” Los Angeles Times, (Available at: <http://www.latimes.com/news/opinion/la-edxm31mar31,0,4846171.story>)”*”
2. The article, which the Miami Herald published under the headline “Sirius, XM didn't market radios the way the Feds intended,” was originally published by the *Associated Press* under the headline “Satellite Radio Decision Criticized.”¹

The spelling of Ryan Saghir's name has also been corrected.

¹ The article has also been published in numerous other places. *See, e.g., San Francisco Chronicle*, April 2, 2008 (<http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2008/04/02/national/w102201D37.DTL&type=politics>); *News & Observer, NC*, April 2, 2008 (<http://www.newsobserver.com/1595/story/1022206.html>); *Salon.com*, April 2, 2008 (http://www.salon.com/wires/ap/2008/04/02/D8VPS2R00_sirius_xm_merger/index.html); *Forbes.com*, April 2, 2008 (<http://www.forbes.com/feeds/ap/2008/04/02/ap4847181.html>); *Denver Post*, April 2, 2008 (<http://www.forbes.com/feeds/ap/2008/04/02/ap4847181.html>); *Business Week*, April 2, 2008 (<http://www.businessweek.com/ap/tech/D8VPUC280.htm>); *Seattle Times*, April 2, 2008 (http://seattletimes.nwsourc.com/html/politics/2004322389_apsiriusxmmerger.html); *Houston Chronicle*, April 2, 2008 (<http://www.chron.com/dispatch/story.mpl/ap/fn/5669126.html>); *San Diego Union Tribune*, April 2, 2008; (<http://www.signonsandiego.com/news/business/20080402-1443-sirius-xm-merger.html>); *Pittsburg Tribune-Review*, April 6, 2008 (http://www.pittsburghlive.com/x/pittsburghtrib/business/s_560939.html)

Yours very truly,

Cameron McAlpine

Cameron McAlpine
Wallman Consulting, LLC
Advisor to U.S. Electronics, Inc.

cc: Monica Desai, Media Bureau Chief
Michelle Carey, Senior Legal Adviser for Media Issues, Chairman Martin
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

Kathleen Wallman
Wallman Consulting, LLC
9332 Ramey Lane
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March 31, 2008

April 7, 2008

Monica S. Desai
Chief, Media Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Dear Ms. Desai:

U.S. Electronics, Inc. (“USE”) calls your attention to five recent articles that offer critical analysis of the proposed XM/Sirius merger.

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.²

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.

² See: “XM and Sirius Merge,” *Los Angeles Times*, (Available at: <http://www.latimes.com/news/opinion/la-edxm31mar31,0,4846171.story>)

The Associated Press

In an April 2, 2008 article John Dunbar of the Associated Press pointed out the illogic of the Department of Justice's reliance on the unavailability of a Sirius-XM interoperable radio as a factor justifying its decision not to oppose the merger.

When antitrust regulators decided last week to allow the nation's only two satellite radio companies to become one, they put forth an unexpected argument -- that the two companies largely do not compete with one another.

That may be true, but it's not what government regulators intended.

Justifying its decision, the Justice Department said customers of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. generally stick to one service once they have signed up, because if they want to switch, they have to buy a new radio. XM's receivers don't get Sirius signals, and vice versa.

When the Federal Communications Commission approved rules that created the business in 1997, it insisted that the two licensees "certify" that their radios would receive both services. The rule was meant to promote competition by making it easy for consumers to switch between satellite radio providers.

"At the very least, consumers should be able to access the services from all licensed satellite DARS (digital audio radio service) systems and our rule on receiver inter-operability accomplishes this," the FCC's 1997 decision reads.

Eleven years later, that goal has been all but abandoned. Subscribers to XM buy one type of radio, subscribers to Sirius buy another. Auto makers install one system or the other, depending on which company they have an exclusive contract with.

The failure to deploy radios that work with both systems was cited by the Justice Department as part of its justification to clear the merger.³

³ See: *San Francisco Chronicle*, April 2, 2008 (<http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2008/04/02/national/w102201D37.DTL&type=politics>), *News & Observer, NC*, April 2, 2008 (<http://www.newsobserver.com/1595/story/1022206.html>), *Salon.com*, April 2, 2008 (http://www.salon.com/wires/ap/2008/04/02/D8VPS2R00_sirius_xm_merger/index.html), *Forbes.com*, April 2, 2008 (<http://www.forbes.com/feeds/ap/2008/04/02/ap4847181.html>), *Denver Post*, April 2, 2008 (<http://www.forbes.com/feeds/ap/2008/04/02/ap4847181.html>), *Business Week*, April 2, 2008 (<http://www.businessweek.com/ap/tech/D8VPUC280.htm>), *Seattle Times*, April 2, 2008 (http://seattletimes.nwsourc.com/html/politics/2004322389_apsiriusxmmerger.html), *Houston Chronicle*, April 2, 2008 (<http://www.chron.com/disp/story.mpl/ap/fn/5669126.html>), *San Diego Union Tribune*, April

The Department of Justice's reliance on the licensees' apparent noncompliance with the Commission's directive to ensure that consumers could receive both licensees' signals rewards the licensees' noncompliance. The Commission should adopt the open device condition that has now been advocated or commented favorably upon, in addition to USE, by Public Knowledge, Media Access Project, New America Foundation, National Association of Telecommunications Officers and Advisors, iBiquity and HD Radio Alliance. Such a condition will allow the competitive marketplace of consumer electronics manufacturers to afford consumers the choice and protection that has not been afforded to them because of the licensees' failure to comply with the Commission's directives.

Public Knowledge, Orbitcast and Sirius Buzz 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.⁴
- Ryan Saghir, 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."⁵
- Tyler Savery, of the blog "Sirius Buzz" in his April 2, 2008 posting, "Open Access - What It Means to The Merger" wrote favorably about the open device condition and how it could be implemented.⁶

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

2, 2008 (<http://www.signonsandiego.com/news/business/20080402-1443-sirius-xm-merger.html>), "Sirius, XM didn't market radios the way the Feds intended," John Dunbar, *Miami Herald*, (Available at: <http://www.miamiherald.com/152/story/480810.html>), *Pittsburg Tribune-Review*, April 6, 2008 (http://www.pittsburghlive.com/x/pittsburghtrib/business/s_560939.html)

⁴ See: <http://www.publicknowledge.org/node/1488>

⁵ See: <http://www.orbitcast.com/archives/open-device-debate-extends-to-sirius-xm.html#more>;

⁶ See: <http://siriusbuzz.com/open-access-what-it-means-to-the-merger.php>

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.

Respectfully submitted

Kathleen Wallman

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Wallman Consulting, LLC
Advisor to U.S. Electronics

cc: Michelle Carey, Senior Legal Adviser for Media Issues, Chairman Martin
Rich Chessen, Senior Legal Advisor and Media Advisor, Commissioner Copps
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