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May 8, 2008

The Honorable Michael Copps
Commissioner

The Honorable Jonathan Adelstein
Commissioner

Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Dear Commissioners Copps and Adelstein:

U.S. Electronics writes to offer its support in crafting meaningful open device conditions as recently called for by Members of Congress. On May 1, 2008 House Energy and Commerce Committee Chairman John Dingell and Subcommittee on Telecommunications and the Internet Chairman Edward Markey wrote to Chairman Martin regarding the proposed merger of Sirius Satellite Radio and XM Satellite Radio for which the parties are now seeking approval by the Federal Communications Commission. They urged the Commission to impose, as a condition of the merger, if it is approved, an open device requirement to protect competition and consumers. In relevant part, their letter states:

...[T]he Commission should require the merged company to permit any device manufacturer to develop equipment that can deliver the company's satellite radio service.

In addition, we believe it is not enough simply to require the open development of satellite radio devices. The Commission must also ensure that consumers have unfettered access to those devices. To that end, the merged company should be prohibited from preventing such devices, and any features such devices might contain, from reaching consumers, through exclusive contracts or otherwise.

As you are aware from U.S. Electronics' visits to your offices and its extensive participation in the record throughout this proceeding, U.S. Electronics was the earliest advocate of an open device condition. It has consistently urged adoption of an open

device condition, and its position has earned support from groups that attend the public interest in spectrum issues, Public Knowledge, Media Access Project, New America Foundation and National Association of Telecommunications Officers and Advisors, and from the consumer electronics industry, HD Radio Alliance and iBiquity.

As with many of the matters under the Commission's supervision, implementation and enforcement of the open device condition that Chairmen Dingell and Markey have called for depends greatly upon the details. At a minimum, the language in the Commission's order relating to the merger, if the Commission approves it, must specify that the surviving SDARS licensee:

- 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;
- Agree to quality control testing by an independent laboratory;
- 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.

U.S. Electronics calls your attention particularly to this last point regarding the appointment of an independent monitor. The prospect of a merger to monopoly in the SDARS market, and the merger parties' history of compliance with the Commission's rules and orders, upon which light has been cast during the Commission's consideration of the proposed merger, makes this essential to protect the public interest. It is intended that the monitor would aid the Commission's enforcement processes by lending prompt attention to apparent violations, not replace the Commission's execution of its statutory responsibilities.

U.S. Electronics believes that the Commission's articulation of an open device condition that truly protects consumers and competition, as envisioned by Chairmen Dingell and Markey, will be greatly aided by detailed consultations with experienced consumer

electronics industry participants. To this end, U.S. Electronics commits to supplement the record in this proceeding with detailed specifications on implementation and enforcement of the open device condition, and to do so shortly. In connection with such a submission, U.S. Electronics will be available to meet with you to brief you about the relevant workings of the consumer electronics industry and how an open device condition is essential to maintaining choice for consumers.

Very truly yours,

Kathleen Wallman

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