



Hon. Donald W. Riegle, Jr.
chairman, government relations

May 28, 2008

The Honorable Kevin Martin, Chairman
The Honorable Michael Copps, Commissioner
The Honorable Jonathan Adelstein, Commissioner
The Honorable Deborah Tate, Commissioner
The Honorable Robert McDowell, Commissioner

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

Re: 'Open Device' Condition Proposed by U.S. Electronics

Dear Mr. Chairman and Commissioners,

As the Commission considers the proposed merger between Sirius Satellite Radio and XM Satellite Radio, I would like to take this opportunity to urge you to review and implement the 'open device' condition that was proposed by U.S. Electronics in an *ex parte* communication dated May 23, 2008.

The proposed condition, which I have included as an addendum to this letter, is critical to protecting consumers and fostering innovation by allowing open and fair competition. I believe that the proposed merger should not be approved without inclusion of such a condition.

I sincerely hope that you will take the time to review this condition and implement it in full. If questions should arise on this important issue, I would be happy to meet with you.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Don Riegle". The signature is fluid and cursive, with a large initial "D" and "R".

Hon. Donald W. Riegle, Jr.

cc: Michelle Carey, Senior Legal Advisor for Media Issues, Chairman Martin
Rich Chessen, Senior Legal Advisor and Media Advisor, Commissioner Copps
Rudy Brioché, Legal Advisor for Media Issues, Commissioner Adelstein
Amy Blankenship, Legal Advisor, Commissioner Tate
Christina Chou Pauze, Legal Advisor, Media, Commissioner McDowell

Kathleen Wallman
Kathleen Wallman, PLLC
9332 Ramey Lane
Great Falls, VA 22066

May 23, 2008

The Honorable Kevin Martin, Chairman
The Honorable Michael Copps, Commissioner
The Honorable Jonathan Adelstein, Commissioner
The Honorable Deborah Tate, Commissioner
The Honorable Robert McDowell, Commissioner

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

RE: Written Ex Parte Comments, 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 Mr. Chairman and Commissioners:

On May 8, 2008, U.S. Electronics committed to provide to the Commission detailed specifications regarding implementation of the open device condition that it has advocated in connection with the proposed merger of XM Satellite Radio and Sirius Satellite Radio. U.S. Electronics' proposal, since it was originally made in the record of this proceeding, has garnered support or favorable comment from public interest organizations such as Public Knowledge, National Association of Telecommunications Officers and Advisers, National Hispanic Media Coalition, Media Access Project and New America Foundation. Industry groups, namely HD Radio Alliance and iBiquity, have also supported the proposal.

Separately, key Members of Congress have called for an open device condition. 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 calling for an open device condition. On May 21, 2008, Senators Claire McCaskill (D-MO) and Olympia Snowe (R-ME), both members of the Senate Commerce Committee, wrote to the Commission also calling for open access.

The consensus regarding adoption of an open device condition now requires the Commission's attention to the specifics of its implementation. U.S. Electronics, as a long time participant in the market for manufacturing and distributing consumer electronics

devices, including satellite radio receivers, has composed a short précis of the elements of such a condition, which is attached. U.S. Electronics stands ready, as the Commission approaches a final decision on whether to disapprove the merger, or approve it with conditions, to assist in the crafting of specific elements of an open device condition to protect consumers and competition.

In that connection, U.S. Electronics will be contacting your offices to request meetings with you and your staff when the Commission has begun its final deliberations on the merits of the merger. We believe that only through consultation with people and companies who have experience with the manufacturing and distributions aspects of the consumer electronics market can the Commission promulgate conditions that will curtail gaming and meaningfully protect consumers and competition.

Very truly yours,

Kathleen Wallman

Kathleen Wallman, PLLC
Counsel to U.S. Electronics.

PROPOSED APPENDIX A TO COMMISSION ORDER:
CONDITION TO PROTECT CHOICE AND COMPETITION IN SATELLITE
RADIO RECEIVER DEVICES

A. Definitions

1. “Sirius” means the post-merger SDARS entity.
2. “Satellite radio receiver” means any device that contains an SDARS chipset or is capable of receiving SDARS signals. This includes but is not limited to receivers that may be used in the home, a motor vehicle, marine applications or portable environments.
3. “Qualified manufacturer” and “qualified distributor” means, respectively, a manufacturer or distributor that offers or seeks to offer satellite radio receivers to consumers that have been or will be subject to testing by an accredited independent testing facility as described in Section C.1. below.

B. Restrictions

1. Sirius shall not directly or indirectly engage in the design, manufacture or distribution of satellite radio receivers.
2. Sirius shall not enter into exclusive agreements with any manufacturer, distributor, retailer, partner or auto manufacturer that limits the availability of hardware capable of receiving SDARS signal by consumers.
3. Sirius shall not participate in setting, influence or seek to influence, directly or indirectly, the retail price paid by consumers to acquire any satellite radio receiver or ancillary hardware used to support the operation of a satellite radio receiver except through mechanisms allowed pursuant to D.2., below.

C. Publication of Technical Requirements

1. Sirius shall publish and make available all technical requirements and specifications for its chipset technology for any hardware that is compatible with the SDARS network, including advance notice of any new, changed, modified or improved requirements or specifications to all interested and qualified hardware providers in an equitable manner that favors no partner or other entity or entities. This information shall be made available at least 6 months prior to their implementation and on a reasonable and non-discriminatory basis.
2. Sirius shall ensure that all requirements or specifications comply with any federal, state or local laws and regulations and that all such regulations are strictly adhered to.
3. Compliance with all requirements, specifications or regulations will be verified by accredited independent testing facilities prior to a device being offered

to consumers and approval will be the responsibility of the manufacturer or distributor that develops the SDARS compatible receiver. Testing fees shall be the responsibility of the manufacturer or distributor seeking approval of a device to be offered to consumers.

D. Voluntary, Non-Discriminatory Provision of Subsidies

1. Chipset subsidies

- a. Chipset subsidies, if provided by Sirius, shall be provided on a non-discriminatory basis, that is, fixed and equal for all manufacturers and distributors and paid in an identical manner.
- b. Sirius shall not participate in setting, nor influence or seek to influence, the pricing to or from a manufacturer, wholesaler or retailer other than the subsidy, if any, referred to in paragraph "a" above, nor shall it accept or seek, directly or indirectly, from a manufacturer, wholesaler or retailer any consideration intended to influence the distribution of chipsets.
- c. Changes in the subsidy amount or manner of payment, if any, shall be applied non-discriminatorily, that is, applied to all recipients equally and at the same time and in the same amount for all partners and with reasonable and equal notice.
- d. Sirius shall have no financial interest in any manufacturer or distributor of satellite radio receivers.
- e. Sirius shall make its chipsets available to qualified manufacturers and distributors on a reasonable and non-discriminatory basis.

2. Sales and Marketing Support: Marketing support, rebates, hardware discounts or any promotional payments or incentives on hardware must be made available non-discriminatorily to all qualified manufacturers, distributors, retailers or devices, as the case may be.

E. Monitoring and Enforcement of Condition

1. An independent monitor will be appointed by the Federal Communications Commission ("Commission") for purposes of receiving complaints from manufacturers and distributors of satellite radio receivers concerning any violations of this condition, and to assist the Commission in enforcement of the condition.
2. The independent monitor will recommend to the Commission proposed resolution of any alleged violation of this condition.