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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: Ex Parte Comments
MB Docket No. 07-57

Dear Ms. Dortch:

On behalf of iBiquity Digital Corporation (“iBiquity”), we are writing a response to recent Ex Parte Comments U.S. Electronics filed with the Commission. Those comments focus on U.S. Electronics’ proposal that the FCC condition any approval of the proposed XM Satellite Radio – Sirius Satellite Radio merger on an “open device” requirement.

At the outset, iBiquity notes U.S. Electronics incorrectly asserts that iBiquity supports its proposed condition. Although iBiquity has not opposed the U.S. Electronics proposal, iBiquity believes the open device condition will not address concerns about ensuring competition between satellite and terrestrial radio.

The proposed open device condition is designed to ensure a merged satellite company will not be able to discriminate *among* satellite licensees. Although this may address U.S. Electronics concerns that it be allowed to produce satellite receivers, it will not restrict a merged satellite company from using its position in the marketplace to disadvantage competing technologies. iBiquity’s proposed condition, requiring a merged satellite company to include HD Radio™ technology in satellite receivers, is designed to prevent the merged entity from blocking competing terrestrial technology from the marketplace.

As iBiquity has emphasized in its recent meetings with Commission personnel, the open device condition, even if combined with a prohibition on exclusive arrangements, will not preclude a merged satellite company from acting to thwart the rollout of HD Radio technology. A merged satellite company will be in a strong position to use its business relationships with companies dominating the distribution/retail channel to create roadblocks to the rollout of terrestrial digital radio receivers.

Currently, XM and Sirius each spend tens of millions of dollars to market their receivers and their accompanying services. Post merger, the satellite company will be in a significantly stronger competitive position vis-à-vis the companies involved in the manufacturing, distribution and installation of satellite receivers, many of whom also are involved in the manufacture, distribution and installation of HD Radio receivers. The merged satellite company could use its market power to control technology design, manufacturing schedules and the distribution network to favor satellite radio over HD Radio products. Relatedly, the merged entity will have more financial resources available as a result of the elimination of millions of dollars in costs the separate companies currently expend to compete with each other. The merged entity will be able to devote some of these resources to competing with the rollout of HD Radio technology. For instance, the merged entity could use merger related cost savings to increase commissions for retail sales of satellite receivers in a manner that creates significant financial incentives for sales people in retail establishments and car dealerships to steer consumers to satellite radio rather than HD Radio technology. Also the merged entity could pay for promotions in weekend circulars of devices that exclude HD Radio technology or could pay to subsidize only those devices that are restricted to satellite radio service. Similarly, if the merged entity were to offer to pay nonrecurring engineering expenses for all receiver manufacturers, it would create an irresistible financial incentive for manufacturers to focus on satellite rather than terrestrial radio. These are only a few examples of the leverage and financial incentives the merged entity could put in place to disadvantage HD Radio technology.

The open device condition, even when combined with a ban on exclusive arrangements, cannot address these concerns or ensure a level playing field for HD Radio technology. Those conditions would not prohibit the satellite entity from using its financial muscle to skew the marketplace in any of the examples discussed above. Although it might seem the open device condition would offer opportunities for new combinations of satellite and terrestrial radio, that viewpoint ignores the reality of the marketplace. iBiquity and the satellite companies are intimately involved in the design of the radio devices, and it is extremely unlikely that low cost producers could provide their own expertise to design the devices without direct input from the owners of the technology. Virtually all manufacturers producing satellite receivers are current iBiquity licensees and have access to both technologies. However, more subtle roadblocks discourage manufactures from combining satellite and terrestrial digital radio. A merged satellite company will be in a stronger position to exploit those roadblocks notwithstanding any open device condition. The Commission should not overlook the fact that both XM and Sirius have failed to integrate their technology in receivers even with an FCC mandate to offer such devices to the public. With further concentration in the supply of satellite radio services and cost savings associated with the merger, the merged entity will have every economic incentive to undercut any attempts to develop or introduce dual functioning devices.

Also, technical constraints on the devices in the marketplace may discourage new innovation. In receivers that have a port for use by digital black boxes offering either

satellite or HD Radio technology, there may be insufficient ports to allow consumers to integrate both technologies. A merged satellite company could offer financial incentives to limit the number of ports on satellite ready headunits, thereby discouraging proliferation of HD Radio devices.

Even if an open device provision is adopted, it is unlikely these shortcomings in the market will be addressed by new entrants offering combined receivers. Particularly in the automobile OEM market, there are numerous factors that make it virtually impossible for new entrants to become what are referred to as Tier 1 parts suppliers. First, it would take several years for any new entrant to demonstrate sufficient technical capability, quality and reliability to be able to qualify as a Tier 1 supplier eligible to bid to supply car platforms. Second, it would take several years for any new entrant to develop products and establish the necessary distribution network. Today, Tier 1 parts suppliers attempt to locate their manufacturing plants geographically close to the automobile assembly plants. This allows the Tier 1 supplier to minimize transportation costs and offer a product in the most economically efficient manner possible. A new Tier 1 supplier would need to establish similar distribution networks if it was going to be successful in competing for any supplier contracts. Third, there is no guarantee that a new entrant would be selected by any of the automobile manufacturers. Many of the OEMs own their radio receiver manufacturers or have a strong financial interest in those suppliers. In those cases, it is unlikely that the automobile manufacturer would select a new entrant as a supplier in lieu of its traditional supplier. Based on these and other factors that influence the automobile marketplace, iBiquity believes that it is extremely unlikely that any new entrant would be able to enter the market and alleviate the competition concerns raised in this proceeding regarding the manufacturing and distribution of radio receivers.

iBiquity continues to believe its proposal that the merged satellite company be required to mandate that its licensees include HD Radio technology in devices that include satellite radio and analog AM/FM provides the best assurance that equivalent digital platforms for satellite and terrestrial radio enter the marketplace.

iBiquity has outlined below the specific class of devices that would be subject to this condition. Overall, iBiquity believes the condition should be structured to apply to satellite devices based on the user interaction with the device rather than the technical architecture of the device installation.

OEM Automobile Installations

The merged entity should be required to ensure that all factory installed satellite radio receivers, either installed as standard or optional equipment, include HD Radio technology. Virtually all passenger vehicles sold in the United States include a radio receiver with analog AM and FM. Today, satellite service can be added by (i) integrating a satellite chip into the receiver in the dashboard or (ii) integrating the satellite functionality into a “black box” that

is hidden from the view of the consumer and hard wired to the receiver “head unit” in the dashboard. In either configuration, the user tunes the terrestrial and satellite functionality using the same controls, and the same display is used for both satellite and terrestrial services. From the consumer’s perspective, once the black box is installed, the radio operates as an integrated satellite and terrestrial receiver. Dealer installed black boxes that operate with the factory installed dashboard head unit would be included in the requirement.

Non-OEM Receivers

The merged entity should be required to ensure aftermarket satellite receivers (automobile, home, tabletop, portable, etc.) that include analog AM/FM include HD Radio technology if the listener operates the terrestrial and satellite functions using the same controls and screen. As is the case with factory installed automobile units, aftermarket receivers can have satellite and analog AM/FM integrated in the same unit. Also, a black box or a separate card containing the satellite technology can be integrated with the head unit that is satellite compatible or “satellite-ready”. In either configuration, HD Radio technology should be included in the integrated unit, the black box or the card to ensure the consumer can choose between satellite and terrestrial digital programming. DCU units (frequently referred to as “plug and play” units) that contain separate tuning for the satellite functionality and a separate display should not be included in the condition even if audio output of the unit is connected to a home or car unit for amplification. In this case, the user has made a decision to operate a separate satellite unit and cannot tune freely between satellite and terrestrial on the same device. Therefore, it presents less of a competitive threat to terrestrial radio if HD Radio technology is not included in these devices. Finally, satellite devices that do not include analog AM/FM and for which the consumer has made a conscious decision to exclude AM/FM do not need to include HD Radio technology.

iBiquity has developed this proposed condition to protect the competitive dynamic between satellite radio and HD Radio technology, not to impede the service offerings of a merged entity. The proposed condition would be imposed on the Commission-licensed SDARS entity, not on other companies in the manufacturing or distribution network. The merged entity, indisputably subject to Commission regulation, would be required to report annually to the Commission that it has included these conditions in its agreements with its licensees and that it has effectively policed those agreements to ensure they are fulfilled.

Conditioning the satellite merger on the requirement that satellite licensees include HD Radio technology as specified above would further the public interest in ensuring a competitive and robust digital platform for AM/FM radio service. iBiquity encourages the Commission to adopt this condition if it approves the proposed merger.

Respectfully submitted,

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