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August 7, 2015

VIA ELECTRONIC FILING

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Amendment to Commission Rules Concerning Adjudication of Spectrum Interference Disputes, RM-11750**

Dear Ms. Dortch:

Sirius XM Radio Inc. (“SiriusXM”) hereby submits this letter in response to the reply comments submitted by T-Mobile USA, Inc. (“T-Mobile”) on July 28, 2015.<sup>1</sup> That filing addresses proposals advanced by the Samuelson-Glushko Technology Law & Policy Clinic and J. Pierre de Vries (collectively, the “Petitioners”) seeking to revise and improve the Commission’s interference dispute resolution procedures.<sup>2</sup> T-Mobile dismisses the need for such improvements, asserting that “the FCC’s existing interference complaint procedures have been and will continue to be effective in resolving disputes.”<sup>3</sup> T-Mobile’s filing ignores significant impediments to the effectiveness of the Commission’s current dispute resolution procedures, which can allow parties’ efforts to avoid their Commission-imposed obligation to remedy interference they are causing. Changes to those procedures will help ensure that Commission licensees comply with this fundamental responsibility.

SiriusXM agrees with the Petitioners and other parties that improvements to the Commission’s interference resolution processes are needed and are long overdue, particularly as spectrum is now “much more thoroughly utilized than it has been in the past.”<sup>4</sup> Greater demand for scarce spectrum resources has led to a more crowded RF environment. That development,

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<sup>1</sup> Reply Comments of T-Mobile USA, Inc., RM-11750 (July 28, 2015) (“T-Mobile Reply Comments”).

<sup>2</sup> Samuelson-Glushko Technology Law & Policy Clinic and J. Pierre de Vries, Petition for Rulemaking: Spectrum Interference Dispute Resolution, RM-11750 (May 8, 2015) (“Petition”).

<sup>3</sup> T-Mobile Reply Comments at 7.

<sup>4</sup> Comments of AT&T, RM-11750, at 2 (July 13, 2015).

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coupled with the Commission's movement away from detailed, site-based licensing and toward geographic licensing with broad operating parameters, has significantly increased the likelihood of interference disputes between spectrum users while complicating parties' ability to resolve disputes without the Commission's involvement. At the same time, potential interference scenarios are growing more complex, making it more difficult to predict how one party's transmissions may impact other uses and make it more difficult for parties suffering interference to identify the source(s) of actual interference when it occurs—particularly with respect to second-, third-, and higher-order intermodulation effects.

The need for effective interference resolution procedures is greater now than ever before and that need will continue to grow. As AT&T correctly observes, an effective interference dispute resolution process must be fact-based, transparent, and timely.<sup>5</sup> But existing procedures fall short in each of these areas and, as discussed below, T-Mobile dismisses the significance of these deficiencies.

***T-Mobile asserts that existing complaint procedures are effective to address interference when it occurs, but real-world experience shows this is not the case.***

Commission-licensed facilities that are allegedly “rule-compliant” can and do cause harmful interference to other licensed spectrum users. The Commission's rules impose obligations on parties to avoid and remedy interference even in circumstances where their facilities generally appear to be operating in accordance with licensed parameters. These “catch-all” provisions require a party to mitigate the interference it causes, but in practice the Commission may be limited in its ability to enforce such provisions effectively. For example, Section 27.64 of the rules authorizes the Commission to address interference caused by AWS licensees by modifying the relevant station license “after notice and an opportunity for hearing.”<sup>6</sup> Relatedly, Section 27.64(b) requires AWS licensees to “attempt to resolve [intermodulation] interference by technical means,” but lacks any clear mechanism through which a victim of such interference could enforce this obligation against another party.<sup>7</sup> Existing complaint procedures should be clarified (or modified) to ensure they are equally effective, and provide a clear path to victims of interference, regardless of whether harmful interference results from violations of a licensee's technical specifications or allegedly “rule-compliant” operations. Under either scenario, the party causing the interference should remedy the interference.

***T-Mobile ignores the significant challenges faced by victims of harmful interference in identifying the source(s) of such interference.*** Because the Commission licenses most commercial mobile radio service (“CMRS”) and mobile wireless facilities on a geographic-area basis, those licensees apparently file no public information identifying the precise locations of

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<sup>5</sup> *Id.* at 2.

<sup>6</sup> 47 C.F.R. § 27.64; *see also* 47 U.S.C. § 316. The definition of “Wireless Communications Service” utilized in Section 27.64 incorporates operations using AWS frequencies. *See* 47 C.F.R. §§ 27.4 and 27.5.

<sup>7</sup> 47 C.F.R. § 27.64(b).

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their transmitter sites or the specific parameters under which they operate those sites. Consequently, victims of harmful interference are severely limited in their ability to identify the party or parties responsible for the interference they are receiving and to seek resolution of such interference privately or by filing complaints with the Commission. Cooperation between parties is essential and the Commission needs effective mechanisms to ensure such cooperation.

Along these same lines, T-Mobile expresses concern that “any entity could be targeted as a ‘defendant’ [in an interference complaint proceeding], even if it has no real relationship to the offending behavior.”<sup>8</sup> But given the practical impediments discussed above, interference complaint proceedings sometimes must “cast a wide net” to ensure the party most responsible for causing harmful interference can be identified and held accountable.<sup>9</sup> In such cases, any potential harm to “innocent” parties can be mitigated through any number of mechanisms, such as: (i) requiring a complainant to bring its complaint in good faith and with at least some basis for believing a particular defendant is the responsible party; (ii) “discovery” mechanisms allowing a complainant to gather pertinent evidence early in the process; (iii) requiring a complainant to dismiss claims against parties for which no evidence of culpability is found; and (iv) mechanisms through which the Commission could objectively evaluate, early in the adjudicatory process, whether sufficient evidence allows particular complaints to proceed (as exist in the case of civil litigation).

***T-Mobile ignores significant harms that can be caused by delays in the existing interference complaint process.*** In the interference context, justice delayed is justice denied. Harmful interference (by definition) significantly impacts a victim’s ability to operate as intended, and the longer such interference is allowed to persist the greater the harm the victim suffers. For an operating business, harmful interference has a significant potential to alienate existing and potential customers. A customer who cannot receive service simply will not continue to pay for that service, with significant and potentially fatal business consequences. Delay also provides the interfering party with significant leverage and the ability to coerce the victim into accepting some level of harmful interference or otherwise foregoing its legal rights. By establishing clear and relatively short timeframes for interim and final steps in the interference resolution process (*e.g.*, party responses, final decisions), the Commission can help mitigate these adverse consequences and help satisfy consumers’ reasonable expectations that they can actually receive the service for which they are paying.

***T-Mobile ignores the lack of transparency in the current interference complaint paradigm.*** SiriusXM agrees with the Petitioners and other commenters that the Commission’s interference resolution procedures should be fact-based, transparent, and timely. However, the Commission’s current process could be susceptible to politicization, with decision-making driven by factors other than a neutral analysis of relevant technical issues and relative spectrum

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<sup>8</sup> T-Mobile Reply Comments at 6 (emphasis in original).

<sup>9</sup> This is especially true in the intermodulation interference context where multiple transmitters may be contributing to the interference and cooperation—including corrective action—may be needed from each of those contributing entities.

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rights. An interference resolution process overseen by an independent, quasi-judicial arbiter would ensure that the Commission's technical decisions are properly insulated from policy initiatives and other external considerations. For these reasons, SiriusXM favors interference adjudication procedures that are protected from political pressures so as to ensure a fair resolution of disputes.

\* \* \* \* \*

In short, SiriusXM agrees with those parties urging the Commission to strengthen its existing interference complaint procedures and encourages the Commission to implement procedures that are effective, expeditious, transparent, and unbiased. Perhaps most importantly, such procedures should place responsibility for resolving harmful interference primarily on the parties responsible for causing such interference in the first place. SiriusXM therefore urges the Commission to reject T-Mobile's efforts to perpetuate a *status quo* that frustrates the Commission's ability to address certain types of harmful interference effectively, to enforce certain interference mitigation obligations, and to prevent certain operators from using their facilities in a manner inconsistent with the Communications Act and Commission policy.

Respectfully submitted,

/s/ John P. Janka  
John P. Janka  
Jarrett S. Taubman

*Counsel to Sirius XM Radio Inc.*

## CERTIFICATE OF SERVICE

I, Jarrett S. Taubman, hereby certify that on this 7th day of August, 2015, I caused a true and correct copy of the foregoing letter to be served upon the following, via first-class mail, postage prepaid:

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