

September 1, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

Re: *Application for Transfer of Control of WCS Wireless License Subsidiary, LLC from WCS Wireless, Inc. to XM Satellite Radio Holdings, Inc. -- WT Docket No. 05-256 and File No. 0002240823*

WRITTEN EX PARTE SUBMISSION

Dear Ms. Dortch:

I am writing on behalf of the Wireless Communications Association International, Inc. (“WCA”) to set the record straight regarding an argument advanced earlier this week by Sirius Satellite Radio Inc. (“Sirius”) in its reply to the opposition filed by XM Satellite Radio Holdings, Inc. (“XM”) and WCS License Subsidiary, LLC (“WCS Wireless License Subsidiary”) to Sirius’ petition to deny the above-reference application. Specifically, Sirius is just plain wrong when it contends that licensees in the Wireless Communications Service (“WCS”) who operate their facilities in compliance with the Commission’s rules nonetheless have an absolute obligation to cure interference that may be suffered by Digital Audio Radio Service (“DARS”) operations.¹ Simply stated, there is no such requirement and, indeed, the Commission has specifically refused to provide DARS licensees with an absolute guarantee against interference from WCS.

In addressing the possibility that it will suffer interference from WCS Wireless License Subsidiary, Sirius would have the Commission believe that there exists some sort of universal “last-in-fixes-it” policy under which every licensee must cure any interference to previously deployed facilities that occurs as a result of its operations, even if that licensee is operating in full compliance with the Commission’s rules and its authorization.² In support of that proposition, Sirius cites to several cases involving services (primarily broadcast services) other than WCS and DARS. However, it is readily apparent from the Commission decisions establishing WCS

¹ See Consolidated Reply of Sirius Satellite Radio Inc. to Oppositions of XM Satellite Radio Holdings Inc. and WCS License Subsidiary, LLC to Petitions to Deny, WT Docket No. 05-256, at 4-5 (filed Aug. 29, 2005).

² *Id.*

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that when a WCS licensee complies with the Commission's rules and the terms of its authorization, it is not under a general obligation to cure interference that may result from its operations. The best example of this involves the Commission's discussion of the adjacent channel interference protection owed by WCS to DARS. The Commission specifically stated that:

[i]n authorizing DARS, it was our desire to ensure a high quality radio service. However, a desire for an interference-free radio service must be balanced with the need to provide reasonable operating parameters for adjacent services. Accordingly, our intention in determining out-of-band emission limits for WCS into the spectrum used by DARS has been to limit the potential for interference to a reasonable level – not to provide a pure, interference-free environment.³

Not surprisingly, then, there is no Commission rule that requires a WCS licensee to take whatever steps are necessary to avoid interference to DARS if it is complying with the rules and its authorization. To the contrary, Section 27.64 of the Commission's Rules specifically provides that “[WCS] stations operating in full accordance with applicable FCC rules and the terms and conditions of their authorizations are normally considered to be non-interfering.”⁴ Repudiating the sort of the one-sided relationship between the two services that Sirius advocates, the Commission instead has established a balanced one in which “[w]e expect WCS *and* DARS licensees to cooperate fully to minimize the possibility of harmful interference from one service to the other.”⁵ As this language (which was relied on by WCS licensees bidding for their

³ *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (“WCS”), Memorandum Opinion and Order, 12 FCC Rcd 3977, 3991 (1997).* The Commission's discussion of the WCS/DARS relationship is not the only indication that WCS licensees are under no general obligation to cure interference resulting from their lawful operations. In addition, in that same decision the Commission found that there was a potential for WCS to interfere with Multipoint Distribution Service (“MDS”) and Instructional Television Fixed Service (“ITFS”) licensees operating with unfiltered downconverters. The Commission recognized that if MDS/ITFS had “sufficient notice and time to adjust to allocation changes in nearby bands, licensees might be expected to mitigate interference costs by voluntarily introducing better, more selective receivers . . .” *Id.* at 3984. However, because the creation of WCS was rushed by Congressional mandate and MDS/ITFS licensees did not have sufficient time to upgrade their facilities, the Commission adopted a special rule requiring WCS to fund new MDS/ITFS equipment under certain limited circumstances for five years – *a rule that would not have been necessary if there were a WCS “last-in-fixes-it” rule as Sirius suggests.* *See id.* at 3984-86. Of course, since WCS and DARS were created at essentially the same time, DARS licensees has ample opportunity to deploy technology immune to lawful WCS operations and cannot be heard to complain about WCS interference.

⁴ 47 C.F.R. § 27.64. While the Commission reserves the right to require a WCS licensee to make modifications, it is clearly a step intended only to be taken in extreme cases, and even then, only after notice and an opportunity for a hearing. Significantly, Section 27.64(b) of the Rules specifies that in the case of intermodulation interference, which appears to be Sirius' primary concern, WCS licensees merely “should attempt to resolve such interference by technical means.” *Id.* Contrary to Sirius' assertion, they have no absolute obligation to cure interference caused by intermodulation at all costs.

⁵ *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (“WCS”), Report and Order, 12 FCC Rcd 10785, 10855 (1997) (emphasis added).*

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spectrum several weeks later) makes clear, Sirius has no reasonable basis for arguing that a WCS licensee that is operating within the confines of the Commission's rules and its WCS authorization must take all measures necessary to eliminate any interference that Sirius might possibly suffer.

Sirius was well aware of the technical parameters regulating WCS long before it commenced operations, and it was incumbent on Sirius to design its facilities to withstand whatever interference it receives from WCS facilities that are operating within the rules.⁶ If Sirius failed to do so, it has only itself to blame. While WCA takes no position on the merits of Sirius' arguments against the transfer of control over WCS Wireless License Subsidiary to XM, the Commission should not fall prey to Sirius' effort in this proceeding to secure interference protection to which it is not entitled.

Respectfully submitted,

/s/ Paul J. Sinderbrand

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⁶ As such, Sirius stands in a very different position than WCS licensees, who have spent the past eight years unsure of the technical parameters that will govern DARS terrestrial facilities.