

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications for Consent to the)	
Transfer of Control of Licenses)	
)	MB Docket No. 07-57
XM Satellite Radio Holdings Inc.,)	
Transferor)	
)	
Sirius Satellite Radio Inc.,)	
Transferee)	
)	

COMMENTS OF NEXTWAVE WIRELESS, INC.

NextWave Wireless Inc. (“NextWave”) submits these brief comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) above-referenced Notice of Proposed Rulemaking concerning the proposed merger of Sirius Satellite Radio Inc. (“Sirius”) and XM Satellite Radio Holdings Inc. (“XM”).¹ In this proceeding, the Commission must decide whether text in the 1997 *SDARS Report and Order*, stating that any combination of Satellite Digital Audio Radio Service (“SDARS”) providers is prohibited, must be revised or revoked via a formal rulemaking before the proposed XM/Sirius merger can be approved.²

NextWave, a 2.3 GHz Wireless Communications Service (“WCS”) licensee,³ wishes to underscore that it is of equal or more regulatory importance, for a greater number of FCC

¹ *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Notice of Proposed Rulemaking, MB Docket No. 07-57, FCC 07-119 (rel. June 27, 2007).

² *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754 (1997) (“*SDARS Report and Order*”).

³ NextWave holds WCS licenses through its wholly-owned indirect subsidiaries NW Spectrum Co. and WCS Wireless License Subsidiary, LLC.

licensees, that the Commission devote its limited time and effort on adopting final technical rules governing: (1) operation of SDARS terrestrial repeaters by XM and Sirius; and (2) operation of WCS systems in the adjacent WCS spectrum. The need to address final technical rules for SDARS and WCS is more than ten years old and impacts XM, Sirius and all licensees in the WCS band – fifteen licensees in all. By contrast, the need for the Commission to address its policy potentially prohibiting the merger of XM and Sirius is just months old and is, seemingly, diverting Commission staff attention away from important regulatory matters that have been pending for years.

NextWave and virtually all other WCS licensees explained the impact of SDARS terrestrial repeaters on adjacent-band 2.3 GHz WCS operations in their consolidated request for extension of the then-applicable construction deadline for 2.3 GHz WCS licenses.⁴ As the WCS licensees observed, resolution of the SDARS terrestrial repeater rulemaking – which has been pending for literally a *decade* – is necessary in order to establish the technical parameters that will govern WCS operation as well as SDARS terrestrial repeaters. Without these rules, vendors cannot begin manufacture of suitable WCS equipment and WCS licensees cannot design and implement their own adjacent-band networks. All WCS licensees were granted a three-year extension of time within which to demonstrate substantial service.⁵ However, each day that passes without resolution of the SDARS interference issues is a wasted day for the extension that was granted.

⁴ Consolidated Request for Limited Extension of Deadline for Establishing WCS Compliance With Section 27.14 Substantial Service Requirement, filed by the WCS Coalition (Mar. 22, 2006). *See also Wireless Telecommunications Bureau Seeks Comment on Consolidated Request by the WCS Coalition for Waiver of Wireless Communications Services (WCS) Construction Rule*, Public Notice, DA 06-1009, 21 FCC Rcd 5148 (2006).

⁵ *Consolidated Request of the WCS Coalition For Limited Waiver of Construction Deadline for 132 WCS Licenses*, Order, 21 FCC Rcd 14134, 14141 at ¶ 14 (2006) (“*Waiver Order*”).

NextWave appreciates that the Commission has many priorities right now, and perhaps the proposed merger of XM and Sirius is one of them, but the Commission must not lose sight of the need to adopt final technical rules governing SDARS terrestrial repeaters and WCS operations, which has stymied growth and development in the adjacent WCS band. To effect the Commission's desire for aggressive development of equipment and service options for the 2.3 GHz band, the WCS Coalition recently proposed reasonable technical rules to govern SDARS terrestrial repeaters and WCS operations. Those rules were submitted to the Commission on July 9, 2007 in IB Docket No. 95-91, and are deserving of the Commission's prompt attention.⁶

CONCLUSION

NextWave requests that as the Commission considers the proposed XM/Sirius merger it not lose sight of the need to finalize technical rules governing SDARS terrestrial repeaters and WCS operations. The Commission should address, without delay, the technical rules proposed by the WCS Coalition on July 9, 2007, in IB Docket No. 95-91.

Respectfully submitted,

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⁶ See Written *Ex Parte* Communication of the WCS Coalition, IB Docket 95-91, GN Docket No. 90-357 and RM-8610 (filed on July 9, 2007).

CERTIFICATE OF SERVICE

I, Peter Andros, certify on this 13th day of August, 2007, a copy of the foregoing Comments of NextWave Wireless, Inc. has been served via electronic mail or first class mail, postage pre-paid, to the following:

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