

September 6, 2007

Jennifer L. Richter
(202) 457-5666
jrichter@pattonboggs.com

VIA ELECTRONIC FILING

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

Re: *Ex Parte* Notice, Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, IB Docket No. 95-91, GEN Docket No. 90-357, RM-8610; WCS License Renewal Applications of NW Spectrum Co. and WCS Wireless License Subsidiary, LLC, ULS File Nos. 0003001466, 0003001467, 0003001468, 0003001469, 0003001470, 0003001471, 0003001472, 0003001473, 0003001474, 0003001475, 0003001476, 0003001477, 0003001478, 0003001479, 0003001448, 0003001449, 0003001450, 0003001451, 0003001452, 0003001453, 0003001454, 0003001455, 0003001456, 0003001457, 0003001458, 0003001459, 0003001460, 0003001461, 0003001462, and 0003001463.

Dear Ms. Dortch:

On September 5, 2007, NextWave Wireless Inc., on behalf of itself and its wholly-owned subsidiaries NW Spectrum Co. and WCS Wireless License Subsidiary, LLC (collectively, "NextWave"), met with Fred Campbell, Chief of the Wireless Telecommunications Bureau, Cathy Massey, Deputy Bureau Chief, Kathy Harris, Deputy Division Chief for Policy of the Mobility Division, and Roger Noel, Chief of the Mobility Division. NextWave's representatives at the meeting were Jennifer McCarthy, Vice President of Regulatory Affairs, Jennifer Richter, counsel from Patton Boggs, LLP and advisor Harold Furchtgott-Roth of Furchtgott-Roth Economic Enterprises.

The substance of the conversation was to encourage the Bureau to take actions that are necessary to ensure the viability and deployment of 30 MHz of valuable Wireless Communications Service ("WCS") spectrum, which was allocated and licensed by the Commission over 10 years ago. Specifically, NextWave urged the Bureau to address two matters: (1) Adopt final technical rules for WCS/SDARS; and (2) Grant the pending WCS renewal applications.

4908469

Ex Parte Notice
September 6, 2007
Page 2

- **First, the Bureau must adopt final technical rules that will govern coexistence of WCS spectrum with adjacent SDARS spectrum.** Detailed recommendations for technical rules have been filed with the Commission by Sirius¹ and the WCS Coalition.² The Commission has been aware of the need for final technical rules for literally a *decade*. Without these rules, vendors cannot begin manufacture of suitable WCS equipment and WCS licensees cannot design and implement their own adjacent-band networks. Due to the regulatory and technical uncertainty, the Bureau granted WCS licensees a three-year extension of time within which to demonstrate substantial service, to July 21, 2010.³ However, each day that passes without adopting final technical rules for WCS and SDARS is a wasted day for the extension. NextWave also emphasized that this issue must be addressed regardless of the outcome of the proposed XM/Sirius merger and that XM and Sirius recently agreed with NextWave that final technical rules are needed.⁴
- **Second, the Bureau must grant the roughly 160 pending WCS renewal applications, including the applications filed by NextWave's subsidiaries.** Commission precedent with respect to other wireless services (PCS, LMDS, EBS and BRS) confirms that action on the WCS renewal applications can and should be taken by the Bureau at this time, even though the substantial service deadline has been extended to July 21, 2010.⁵ The Bureau already concluded in the *Waiver Order* that extending the substantial service deadline for NextWave and other WCS licenses is in the public interest. It must also be in the public interest to expeditiously grant the renewal applications so that WCS licensees will have the regulatory confidence they need to move forward with buildout. Continued inaction on the WCS renewal

¹ See, *Petition of Sirius Satellite Radio Inc. for Rulemaking and Comments*, IB Docket No. 95-91 (filed Oct. 17, 2006).

² 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).

³ See, *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*").

⁴ See, *Consolidated Reply Comments Of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc.*, MB Docket No. 07-57, n.22 (filed on August 27, 2007).

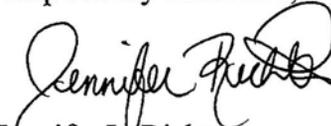
⁵ The Bureau has repeatedly emphasized that there is no need to tie renewals and substantial service showings when the dates are separate. Grant of renewals can proceed, and need not be conditioned upon satisfaction of substantial service, because failure to subsequently make a timely substantial service showing will automatically cancel the license. 47 C.F.R. § 1.946(c).

Ex Parte Notice
September 6, 2007
Page 3

applications, some of which were filed 5 months ago, creates an unfounded and unreasonable air of uncertainty regarding the licenses.

Pursuant to Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed with the office of the Secretary. Please contact the undersigned if there are any questions or comments associated with this notice.

Respectfully submitted,



Jennifer L. Richter
Counsel to NextWave Wireless Inc.

cc: Fred Campbell
Cathey Massey
Roger Noel
Kathy Harris