

October 2, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, NW
Washington, DC 20554

Re: *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*

NOTICE OF ORAL EX PARTE PRESENTATION

Dear Ms. Dortch:

I am writing pursuant to Section 1.1206(b)(2) of the Commission's Rules to notify the Commission that yesterday, Jennifer McCarthy of NextWave Broadband, Inc., Ron Olexa of Horizon Wi-Com, LLC, David Urban of Comcast Corporation, Henry Hultquist of AT&T Inc., Mary O'Connor of Wilkinson Barker Knauer, LLP, and I met with Aaron Goldberger, Legal Advisor to Chairman Kevin J. Martin, to discuss the rules proposed by the WCS Coalition to govern the operation of satellite Digital Audio Radio Service ("DARS") terrestrial repeaters and Wireless Communications Service ("WCS") systems in the 2305-2360 MHz band.

During the course of that discussion, the rationale behind the rules proposed by the WCS Coalition (previously advanced by the WCS Coalition in its July 9, 2007 written ex parte filing) was reviewed. The WCS Coalition explained that the DARS licensees have over-stated the potential for interference to their operations from loosening the WCS spectral mask for low-power devices as proposed by the WCS Coalition. In addition, the WCS Coalition once again emphasized that the DARS licensees accepted their terrestrial repeater special temporary authorizations conditioned on protecting WCS and conforming to the final rules adopted in this proceeding. We noted the irony of the DARS licensees complaining of the costs to conform their terrestrial networks to new rules at the same time they are asking the Commission to approve a merger that, in the words of Mel Karmazin, will save "billions of dollars – billions with a 'B'".¹ Finally, the WCS Coalition stressed the importance of moving forward quickly to revise both Part 25 and Part 27 to accomplish the rule changes necessary to permit the WCS to develop as a source of mobile broadband services, while still providing reasonable levels of

¹ A copy of an article from *Business Week* quoting Mr. Karmazin's statement was provided to Mr. Goldberger and is attached hereto.

WILKINSON) BARKER) KNAUER) LLP

Marlene H. Dortch

October 2, 2007

Page 2

interference protection to DARS operations. We noted, however, that there are other vehicles, including waivers and agreements among the parties, that would permit rapid implementation of many of the WCS Coalition's proposals before conclusion of a rulemaking proceeding.

Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel to the WCS Coalition

Attachment

cc: Aaron Goldberger

UP Front

"This sends a message we're in deep doo-doo."

—Robert Toll, CEO of luxury-home builder Toll Brothers, on what the Fed's larger-than-expected half-percentage-point interest rate cut says about the economy, as reported by USA Today

EDITED BY DEBORAH STEAD



invoice is the biggest. Those numbers are dwarfed by what the NAB has spent: \$4.3 million in the first six months of the year. It has used 10 firms, led by the **Ashcroft Group**, run by the former Attorney General.

Sirius (where Howard Stern stars) and XM (which offers *Oprah & Friends*) are a bit surprised by the strong resistance to the merger. Karmazin notes that when **AT&T** acquired **BellSouth** for more than \$80 billion, there wasn't one congressional hearing. "We've done four," he says, "on two companies that have never made a dime."

Lobbying fees are only part of the expense. In a recent SEC filing, XM reported that for the first half of 2007, general and administrative costs were up 93%, to \$70 million, a surge driven "primarily by an increase in consulting fees and legal fees"

associated with transactions "such as the pending merger with Sirius." An XM spokesman says the merger-related part of this came to \$12 million. Sirius' merger expenses over the same period were \$19 million. Combined, that works out to roughly \$170,000 a day.

With a merger, Sirius and XM stand to save a lot of money. "There are billions of dollars—billions with a 'B'—that could be saved," says Karmazin. And failing

Sirius and XM are spending huge sums to blunt merger opposition

to merge could be costly. On their own, they might be tempting targets for a satellite TV company such as **Directv Group** or a cable provider such as **Comcast**. At Sirius, there's also speculation that Stern might bolt in search of a

bigger audience. But Karmazin says the shock jock cherishes his freedom from FCC constraints. "Howard will never go back," he says. —Peter Elstrom

(L TO R) PHOTOGRAPHS BY RICHARD DREW/AP PHOTO; DARA KUSHNER/INFPHOTO.COM

LOBBYING

The Sky-High Costs Of a Satellite Deal

IT'S CRUNCH TIME for satellite radio: Federal Communications Commission Chairman Kevin Martin says his goal is to reach a decision by yearend on whether to approve a merger of **Sirius Satellite Radio** and **XM Satellite Radio**. The verdict can't come too soon for Sirius CEO Mel Karmazin and XM Chairman Gary Parsons. They've spent millions to blunt opposition to the deal. "In this merger, lawyers will make more money than the bankers," Karmazin says.

Leading the charge against the merger is the National Association of Broadcasters (NAB), which represents traditional radio and TV stations. It argues that if the only two players in satellite

merge, local stations and listeners will lose out. "Monopolists have the ability to raise prices and discriminate," David Rehr, NAB president, told Congress. XM and Sirius argue that together they would control just 3% to 4% of the entire radio market.

XM and Sirius have fielded an army of lawyers to sell Washington on the deal. In recent SEC filings, Sirius said it spent \$650,000 on lobbyists in the first half of 2007. XM reported it had anted up \$580,000. Together, the two hired 13 lobbying firms. At XM, the **Palmetto Group's** \$70,000 tab is so far the largest. At Sirius, **Wiley Rein's** \$420,000