SIRIUS SATELLITE RADIO INC.
1221 Avenue of the Americas, 36th Floor
New York, NY 10020

XM RADIO INC.
1500 Eckington Place, NE
Washington, DC 20002

April 18, 2008

WRITTEN EX PARTE
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band - WT Docket No. 07-293; 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

Dear Ms. Dortch:

Sirius Satellite Radio Inc. ("Sirius") and XM Radio Inc. ("XM") hereby respond to the recent letter of the Wireless Communications Association International ("WCAI") in this docket.

First, the WCAI is simply wrong when it claims that the technical proposals of Sirius and XM would "*preclude any wireless broadband services at 2.3 GHz in the United States*"[1] and is ignoring the central distinction between *mobile* and *fixed* wireless broadband services. Sirius and XM have repeatedly made clear (and again in their most recent filings) that fixed wireless broadband services can easily co-exist with satellite radio in the adjacent band. Indeed, AT&T and others provide fixed wireless broadband service in the 2.3 GHz band today[2] without interfering with satellite radio downlinks.

Second, notwithstanding WCAI's rhetoric, its real complaint is that the Commission long ago adopted rules to protect satellite radio service reception that necessarily preclude most *mobile* wireless broadband by WCS licensees. Sirius and XM have demonstrated through rigorous testing that the rule changes now sought by the WCS licensees – in order to market their version of mobile broadband – would have a crippling

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[1]/ *See* Letter from Andrew Kreig, President, WCAI to Chairman Kevin J. Martin, FCC, April 10, 2008 (emphasis in original).

[2]/ *See* Press Release, AT&T Announces Availability of Fixed Wireless High Speed Internet Access in Pahrump (Nov. 16, 2006), http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=23161 (last visited Mar. 6, 2008); *see also* http://www.digitalbridgecommunications.com/SupportCenter/FAQs/tabid/77/Default.aspx#8 (last visited Mar. 6, 2008).

effect on satellite radio received today by more than 17 million customers. These conclusions are not anomalous to the WCS/satellite radio services; similar incompatibilities can be predicted to occur whenever mobile transmitters come into close proximity with adjacent band mobile receivers.[3]

This should come as no surprise, however, to WCAI or any other party to this proceeding. Over ten years ago, the Commission *explicitly warned* potential WCS licensees that restrictions in its rules designed to protect satellite radio could "make mobile operations in the WCS spectrum technologically infeasible."[4] The Commission cautioned parties interested in WCS "to carefully consider whether their anticipated uses and business plans can be successfully implemented under the additional technical and operational restrictions necessary to qualify for the lesser out-of-band emission limit."[5] It was partly for this reason that WCS spectrum was auctioned at a fraction of the price of other bands, with some markets going for as little as $1.00.

Third, WCAI's reference to new equipment for mobile WiMax operation in the 2.3 GHz band is completely irrelevant. That equipment was designed for and will be used outside the United States where adjacent spectrum is not allocated for satellite radio services. Conversely, in this country XM and Sirius have invested billions of dollars to create vibrant audio program services, in reliance on WCS rules specifically protecting the ability of satellite radio consumers to receive those services.

Finally, WCAI also ignores the fact that the Commission has set aside other bands suitable for mobile broadband in this country, and that such spectrum already is under development for mobile WiMax applications. There is no need to harm satellite radio consumers in the 2.3 GHz band to satisfy the demands of WCS licensees.

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[3] *See e.g.*, Reply Comments of AT&T Inc., WT Docket No. 07-195, at 1 (filed Jan. 14, 2008) (stating that a "downlink only model represents the highest and best use of the AWS-3 spectrum" because of the potential for interference from AWS-3 mobile devices to mobile devices in the AWS-1 and AWS-2 bands and noting that "[p]rovision of uplink transmissions in the [AWS-3] band would require stringent restrictions on operating power and out-of-band emissions ("OOBE") and render deployment of a commercial mobile network impractical").

[4] *See Amendment of the Comm'n's Rules to Establish Part 27, the Wireless Commc'ns Serv.*, Memorandum Opinion and Order, 12 FCC Rcd 3977, 3978 (¶ 3) (1997) (warning potential WCS bidders that "wide area, full mobility systems and services such as those being provided or anticipated in the cellular and PCS bands are likely to be of questionable feasibility.").

[5] *Id.* at 3979 (¶ 5).

For all of these reasons the Commission should reject the proposals of the WCS licensees in this docket and instead adopt those of Sirius and XM. Again, fixed WiMax operations can coexist with satellite radio reception in the 2.3 GHz band. But, as demonstrated by rigorous testing, mobile WiMax as proposed by the WCS licensees cannot.

Respectfully submitted,

/s/ Patrick L. Donnelly
Patrick L. Donnelly
Executive Vice President, General Counsel
& Secretary
Sirius Satellite Radio Inc.
1221 Avenue of the Americas, 36th Floor
New York, NY 10020
(212) 584-5100

/s/ James S. Blitz
James S. Blitz
Vice President, Regulatory Counsel
XM Radio Inc.
1500 Eckington Place, NE
Washington, DC 20002
(202) 380-4000

CC:
Aaron Goldberger
Bruce Gottlieb
Renee Crittendon
Wayne Leighton
Angela Giancarlo
Fred Campbell
Julius Knapp
Helen Domenici
Robert Nelson
Steven Spaeth
Stephen Duall