

SIRIUS SATELLITE RADIO INC.
1221 Avenue of the Americas, 36th Floor
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July 31, 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”)¹ supports the Federal Communications Commission’s (“Commission”) efforts to bring the above-captioned rulemaking to a quick and reasoned conclusion. No one supports completing this long-delayed proceeding more than Sirius; since the inception of satellite radio, Sirius has had to develop its repeater networks using a cumbersome STA process rather than relying on licensing rules, which it has urged the FCC to adopt throughout this proceeding. However, NextWave Wireless Inc. (“NextWave”) is now claiming that the “delay in adopting rules,” including relief from the out-of-band emissions masks, “is jeopardizing the ability of WCS licensees to meet their substantial service deadline of July of 2010.”² This argument is patently false and contradicts prior statements by the WCS licensees.

Simply put, no rule changes are necessary in order for WCS licensees to meet their substantial service requirements. It is a matter of Commission record that other large WCS licensees – including Horizon Wi-Com and Comcast – have met their construction obligations without the need for any of the rule modifications proposed by the WCS

¹ Following the recently consummated merger of XM Satellite Radio Holdings Inc. (“XM”) and Sirius, XM became a wholly-owned subsidiary of Sirius.

² See Letter from Jennifer M. McCarthy, Vice President, Regulatory Affairs, NextWave Wireless Inc. to Marlene H. Dortch, Secretary, FCC (filed July 9, 2008); see also See Letter from Jennifer M. McCarthy, Vice President, Regulatory Affairs, NextWave Wireless Inc. to Marlene H. Dortch, Secretary, FCC, at 2 (filed June 18, 2008); Letter from Jennifer M. McCarthy, Vice President, Regulatory Affairs, NextWave Wireless Inc. to Marlene H. Dortch, Secretary, FCC (filed July 16, 2008) (noting that the parties discussed “the need to resolve the co-existence issue with WCS in order to enable WCS licensees to complete their recently extended construction requirements within the next two years”).

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Coalition.³ Moreover, the WCS licensees were granted an extension of the construction requirements on the basis that rule changes were not necessary for them to meet their construction deadlines. Specifically, only two years ago, in support of its request for an earlier extension of its construction deadline, the WCS Coalition stated that “the WCS Coalition has *not* suggested that relief from the restrictive WCS spectral mask is necessary to permit deployments to move forward in accordance with their proposed extended construction schedule, making the WCS spectral mask issue of no relevance here.”⁴ This statement constitutes a commitment by WCS Coalition members that they can construct their stations with or without the proposed rule changes, and the Commission should hold the WCS licensees to this commitment.

As other WCS licensees have evidenced, NextWave can construct its system in compliance with its license and the Commission’s current rules. The WCS industry’s effort to change established rules provides no basis for NextWave or any WCS licensee to avoid responsibility for failing to build out its facilities in a timely manner, particularly given their failure to do so over the last 11 years.⁵ For these reasons, the Commission should disregard NextWave’s plea for regulatory relief in order to satisfy the service requirements in its WCS licenses.

Respectfully submitted,

/s/ Patrick L. Donnelly

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³ Comcast and Horizon Wi-Com have both filed substantial service showings for several markets. *See e.g.* ULS Application No. 0003107370 (construction notification filed by Comcast WCS ME16, Inc.); ULS Application No. 0003014435 (construction notification filed by Horizon Wi-Com LLC).

⁴ *See* Reply Comments of the WCS Coalition, WT Dkt. No. 06-102, 12 (filed June 23, 2006)(emphasis in original).

⁵ AT&T has begun offering commercial service using 2.3 GHz spectrum in Pahrump, NV. *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 July 22, 2008).

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