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VIA ELECTRONIC FILING

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

Re: Written Ex Parte Presentation
GN Docket No. 09-29
WT Docket No. 07-293

Dear Ms. Dortch:

Sirius XM Radio Inc. (“Sirius XM”) hereby responds to the comments recently filed by DigitalBridge Communications Corp. (“DigitalBridge”) and Main Street Broadband LLC (“Main Street”) in the above-captioned proceedings regarding the linkage between rapid resolution of the pending WCS rulemaking proceeding and the deployment of rural broadband services.¹ Sirius XM believes that these comments are misplaced and that the completion of the WCS proceeding should have no bearing on the FCC’s worthwhile efforts to develop a comprehensive rural broadband strategy.

Contrary to the assertions of DigitalBridge and Main Street, the WCS spectrum is available today for wireless broadband uses in all areas of the country, including in the rural markets that are the subject of their comments. While certain mobile WCS services and devices are currently restricted in order to provide interference protection to satellite radio consumers,² WCS spectrum can now be used for fixed broadband applications such

¹ Comments of DigitalBridge Communications Corp., WT Docket No. 07-293 (filed March 25, 2009) (“DigitalBridge Comments”); Letter from Michael F. Mies, Chief Executive Officer, Main Street Broadband LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-293 (filed March 25, 2009) (“Main Street Broadband Comments”).

² In 1997, the Commission concluded that stringent out-of-band emission limits for WCS mobile operations were “required in order to adequately protect satellite DARS

as middle-mile back-haul links that DigitalBridge and others have argued are needed to facilitate the development of rural broadband networks.³ Some WCS licensees are already using their spectrum for fixed broadband applications. AT&T, for example, is now using its WCS spectrum to offer fixed wireless broadband Internet access service in eight U.S. markets.⁴

The limited deployment of rural broadband is not due to any lack of spectrum in rural markets for mobile broadband services. In fact, there are numerous opportunities available to DigitalBridge and Main Street to access spectrum for the provision of broadband services in rural markets. For example, in the past five years, the FCC has taken steps to make available an additional 400 MHz nationwide for licensed mobile broadband applications.⁵ The size of these other commercial allocations will create manufacturing economies of scale that can not be replicated in the 30 MHz of spectrum

reception from WCS transmissions.” *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service*, Report and Order, 12 FCC Rcd 10785, 10854, ¶¶ 136, 138 (1997). In so doing, the Commission understood that its actions would render “wide area, full mobility systems and service such as those being provided or anticipated in the cellular and PCS bands are likely to be of questionable feasibility” in the 2.3 GHz WCS bands. *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service, Memorandum Opinion and Order*, 12 FCC Rcd 3977, 3979 (¶ 5) (1997)

³ See, e.g., Comments of Sprint Nextel Corporation, GN Docket No. 09-29, at 4 (filed March 25, 2009) (“The critical link between reasonable access to bottleneck special access facilities and broadband deployment cannot be overstated.”); Letter from Joseph M. Sandri, Jr., Senior Vice President, Government & Regulatory Affairs, FiberTower Corporation, et al. to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-29, at 1 (filed March 25, 2009) (“‘Middle mile’ broadband (*i.e.*, backhaul) is a necessary, essential input for all broadband networks, whether they are licensed or unlicensed. Middle mile infrastructure, which connects end-user networks to the world wide web or to network switching centers, must be build before consumers can fully realize the benefits of new unlicensed and licensed broadband networks and devices.”).

⁴ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Thirteenth Report, DA 09-54 at ¶ 23 (Jan. 16, 2009)

⁵ The creation of the Broadband Radio Service, as well as the auctioning of licenses for the AWS-1 band and the 700 MHz bands, has made available approximately 350 MHz for mobile broadband services since 2004. See, e.g., *id.* at ¶¶ 75 – 94. Clearwire, the primary Broadband Radio Service licensee, is already providing high-speed Internet access and VoIP services in 46 markets, mainly smaller towns and cities, covering approximately 13.7 million people and expects to cover more than 120 million people by the end of the 2010. *Id.* at ¶ 149. See also, *Clearwire Defies Skeptics, Plans Hefty CapEx in 2009*, March 6, 2009, available at <http://www.wirelessweek.com/News-Clearwire-CapEx-2009-030609.aspx>. Other commercial allocations, including allocations for unlicensed devices, have made available even more spectrum for broadband devices.

allocated for WCS. In short, the WCS spectrum is not a critical component to improving the availability of commercial broadband services in rural markets.⁶

In any event, the Commission should not act on the recommendations of DigitalBridge and Main Street regarding the WCS rulemaking without first addressing the very real threat of interference that mobile WCS devices pose to over 19 million satellite radio subscribers. This threat was recently highlighted in video demonstrations that Sirius XM submitted to the FCC and was analytically validated by independent engineering firms Motorola, Inc. and Southwest Research Inc.⁷ While Sirius XM urges a prompt conclusion to the ongoing rulemakings involving WCS and satellite radio, the relevant service compatibility issues must be resolved in a scientific manner based on technical facts. Such facts are most appropriately debated in WT Docket File 07-293, a proceeding that has been pending for little more than one year, and not in the Commission's rural broadband proceeding.

To this end, Sirius XM notes that the WCS Coalition, Sirius XM, and the FCC staff are currently engaged in discussions to conduct further joint tests that would provide a sound record on which to resolve these proceedings.⁸ Interference controversies such as the current one should be resolved based on such testing and the hard facts resulting from such testing, rather than a misguided effort to identify WCS spectrum as the solution to rural broadband needs and to modify existing interference protections to serve that end.

⁶ And while a plethora of terrestrial broadband spectrum lays fallow across rural America, Sirius XM utilizes only 25 MHz to distribute satellite radio services that provide news, entertainment, weather and information to all corners of the contiguous United States. Although GN Docket No. 09-29 addresses rural broadband, the Commission should also consider that satellite radio service is a particularly important service to residents of rural areas due to the limited availability of terrestrial radio broadcasts in less populated parts of the country.

⁷ See Letter from Robert L. Pettit, Counsel for Sirius XM Radio Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-293, February 09, 2008. See also, Letter from Terrence R. Smith, Corporate Vice President and Chief Engineering Officer, and James S. Blitz, Vice President, Regulatory Counsel, Sirius XM Radio, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-293, submitted February 27, 2009.

⁸ Letter from Paul J. Sinderbrand, Counsel to the WCS Coalition to Paul Murray, Office of Acting Chairman Michael Copps et al., WT Docket No. 07-293, at 4-5 (filed March 19, 2009).

Sirius XM looks forward to continuing the productive work with all interested parties in this proceeding. In the meantime, however, the Commission should reject any suggestion that prompt resolution of this proceeding is somehow necessary in order to promote the deployment of rural broadband.

Respectfully submitted,

/s/ James S. Blitz

James S. Blitz

Vice President, Regulatory Counsel

Sirius XM Radio, Inc.