

April 7, 2010

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) and Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band (IB Docket No. 95-91) -- WRITTEN EX PARTE PRESENTATION*

Dear Ms. Dortch

At virtually every critical turn in these proceedings, the strategy of Sirius XM Radio Inc. ("Sirius XM") has been the same – delay, delay, delay. That is hardly surprising, as Sirius XM has little to gain by adoption of final rules. While those rules will provide Sirius XM with its first permanent authority to operate terrestrial repeaters, those rules are likely to require Sirius XM to modify the terrestrial repeater network that it has been operating pursuant to STAs for almost a decade, something it consistently has resisted doing.¹ And, adoption of the new rules will subject Sirius XM to new competition from WCS-enabled mobile broadband that provides the public with mobile access to free services like Pandora, Slacker and a range of Internet radio services that largely duplicate, if not improve upon, Sirius XM's offerings.²

Thus, Sirius XM's request yesterday for a delay in the deadline to respond to the Commission's *Public Notice* soliciting comment on the staff's proposed rules is hardly surprising.³ Yet, additional time should not be necessary for Sirius XM to analyze the staff

¹ See Comments of XM Radio Inc., WT Docket No. 07-293 at 25 (filed Feb. 14, 2008); Comments of Sirius Satellite Radio Inc., WT Docket No. 07-293 at 35-37 (filed Feb. 14, 2008) ("Sirius 2008 Comments"); Letter from Robert L. Pettit, IB Docket 95-91 *et al.*, (filed Sept. 3, 2009).

² It should be noted that when Sirius Satellite Radio, Inc. and XM Radio Inc. applied to the Commission for authority to merge, the expressly cited to Internet radio as a competitive threat. See Consolidated Application of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc., MB Docket No. 07-57, at 23 n.52, 28-30 (filed Mar. 20, 2007)(citing to Slacker and Internet radio services as competitors to satellite radio).

³ Letter from Jennifer D. Hindin, IB Docket No. 95-91, *et al.*, (filed Apr. 6, 2010).

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proposal. As the *Public Notice* recounts, the record developed regarding the technical issues in these proceedings – one of which has been ongoing for thirteen years – is voluminous. The staff proposal suggests five very specific elements to protect Sirius XM from interference, each of which Sirius XM has addressed in detail before.⁴

First, the staff proposes to restrict the power level at which base stations and mobile devices can transmit, suggesting benchmarks that have been the topic of extensive discussion by all parties, including Sirius XM, for years.⁵ Second, it would require that WCS mobile devices employ transmit power control, a proposal that has been commented upon by Sirius XM numerous times since it was first advanced by the WCS Coalition.⁶ Third, the staff proposes to ban WCS mobile devices from the 5 MHz of WCS spectrum closest to the Sirius XM allocation, creating the very sort of guardband that Sirius XM has previously advocated.⁷ Fourth, it proposes to adopt the very same out-of-band emission limits for WCS mobile devices that Sirius XM has been addressing since before a draft order in these proceedings was scheduled for adoption at the December 2008 open meeting.⁸ Fifth, and finally, the staff proposes duty cycle restrictions on WCS mobile devices. While the recommended duty cycle limit is not one advocated by Sirius XM, Sirius XM was the first to advance the concept of duty cycle as a vehicle for regulating interference and has submitted numerous filings on the implications of duty cycle restrictions.⁹

In short, none of the techniques advanced in the staff proposal for addressing WCS/DARS interference are new to this proceeding, and there is nothing the staff suggests that justifies further delay. Pursuant to Sections 1.1206(b)(1) and 1.49(f) of the Commission's Rules, this letter is being filed electronically with the Commission via the Electronic Comment Filing System.

⁴ See Commission Staff Requests That Interested Parties Supplement The Record On Draft Interference Rules For Wireless Communications Service And Satellite Digital Audio Radio Service, *Public Notice*, DA-10-592 (rel. Apr. 2, 2010).

⁵ See, e.g. Sirius 2008 Comments at 32 (“the Commission must dramatically reduce the permissible power limits in the rules today”).

⁶ See, e.g. Letter from Patrick L. Donnelly and James S. Blitz, IB Docket No. 95-91, *et al.*, Appendix at 8 (filed July 9, 2008) (addressing WCS Coalition proposal for requiring transmit power control in mobile devices).

⁷ Letter from James S. Blitz, IB Docket No. 95-91, *et al.*, at 10 (filed Sept. 8, 2008) (proposing that the Commission should not permit mobile use in the C and D blocks).

⁸ *Id.* at 12-15 (addressing the WCS Coalition's proposed compromise out-of-band emission limits).

⁹ See, e.g. Letter from Terrence R. Smith and James S. Blitz, IB Docket No. 95-91, *et al.*, at 6 (filed Aug. 3, 2009).

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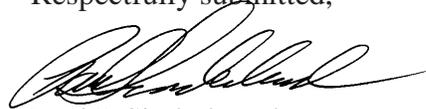
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Should you have any questions regarding this presentation, please contact the undersigned

Respectfully submitted,



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