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Federal Communications Commission  
Office of the Secretary

November 26, 2008

Via ECFS

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: Ex Parte Presentation in: WT Docket No. 07-293, IB Docket No. 95-91, Gen. Docket  
90-357, RM No. 8610

Dear Ms. Dortch:

This letter provides notice that on November 25, 2008, Ron Olexa of Horizon Wi-Com (“Horizon”), Justin Lilley of TeleMedia Policy Corp., Harold Furchtgott-Roth of Furchtgott-Roth Economic Enterprises, Paul Sinderbrand of Wilkinson Barker Knauer, LLP, Counsel to the WCS Coalition, as well as the undersigned of NextWave Wireless Inc. (“NextWave”), met with Charles Mathias of Chairman Kevin J. Martin’s office and Ronald Repasi of the Office of Engineering and Technology (“OET”), regarding the above captioned proceedings.

The participants discussed an *ex parte* submission of November 20, 2008, by the Aerospace & Flight Test Coordinating Council (“AFTRCC”) in which it advanced its proposal for imposing significant new restrictions on out-of-band emissions (“OOBE”) by Wireless Communications Services (“WCS”) above 2360 MHz.<sup>1</sup> Adoption of such new limits would adversely impact the ability of WCS licensees to productively utilize the 2305-2320/2345-2360 MHz band for the provision of wireless broadband services. NextWave, Horizon and the WCS Coalition urged the Federal Communications Commission (“FCC” or “the Commission”) to retain the current provisions of Section 27.53(a)(3) of the Commission’s Rules, which govern WCS OOBE above 2360 MHz.

Section 27.53(a)(3) currently mandates that WCS licensees attenuate the OOBE of fixed base stations as well as fixed and mobile end user stations by at least the industry-standard  $43+10\log(P)$  in the 2360-2370 MHz band, but increase attenuation to at least  $70+10\log(P)$  above 2370 MHz. The industry participants noted that this requirement has been in place since WCS was first established eleven years ago,<sup>2</sup> and until the Commission launched this proceeding to promote the use of WCS for broadband applications, neither AFTRCC nor its constituents have ever suggested

<sup>1</sup> See Letter from William K. Keane, Counsel to AFTRCC, to Marlene H. Dortch, FCC Secretary, WT Docket No. 07-293 *et al.*, (filed Nov. 21, 2008)[“AFTRCC Nov. 21, 2008 *Ex Parte*”].

<sup>2</sup> See Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (“WCS”), *Report and Order*, 12 FCC Rcd 10785, 10854 (1997) [“WCS *Report and Order*”].

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that this requirement was inadequate to reasonably protect their operations. AFTRCC's long-standing acquiescence in Section 27.53(a)(3) is not surprising: it participated extensively in the proceeding that led to the adoption of current Section 27.53(a)(3),<sup>3</sup> and did not petition for reconsideration or otherwise indicate that its telemetry constituents would be harmed by the WCS OOB permitted under that rule.<sup>4</sup>

Eleven years later, however, AFTRCC urges the Commission to substantially tighten the OOB requirements set forth in Section 27.53(a)(3). AFTRCC attempts to justify its sudden about-face by citing the proposal by the WCS Coalition to afford low-powered user stations relief from the OOB limits applicable to the 2320-2345 MHz SDARS band that "ha[ve] effectively precluded mobile use of the WCS band."<sup>5</sup> The industry participants established that the logic of that argument is illusive because *the WCS community has not proposed any rule changes in this proceeding that would materially increase the threat of interference from WCS*. Under the WCS proposal, WCS OOB would still have to be attenuated by at least  $43+10 \log(P)$  at 2360-2370 MHz, and to attenuate their OOB above 2370 MHz by at least  $70+10 \log(P)$ , just as it is today.

Simply put, it was stressed that the WCS Coalition has never proposed, and is not now proposing, any change whatsoever in the OOB restrictions for fixed, base station or mobile units contained in Section 27.53(a)(3). The current OOB limit of  $43+10\log(P)$  in the 2360-2370 MHz band with the increased attenuation to at least  $70+10\log(P)$  above 2370 MHz has and will continue to provide AFTRCC and its constituents with adequate protection. The WCS community's proposal to relax the OOB limits into the 2320-2345 MHz SDARS band does not adversely effect the operations of services outside of this band.

Given that there has been no interference under the current rules to aeronautical telemetry from existing WCS operations, which are utilizing FCC type-accepted fixed devices operating at much higher power levels than WCS mobile devices would, there is no reason to expect there will be any interference under these same rules when low power WCS devices begin operations. Moreover, were these new more stringent rules adopted, existing WCS operators providing fixed broadband services would have to recall and replace all of the equipment currently in operation. There is no evidence that the current limits are inadequate to protect aeronautical telemetry services to justify disruption to existing fixed WCS broadband services.

<sup>3</sup> See Comments of Aerospace and Flight Test Radio Coordinating Council, GN Docket No. 96-228 (filed Dec. 4, 1996); Reply Comments of Aerospace and Flight Test Radio Coordinating Council, GN Docket No. 96-228 (filed Dec. 16, 2006).

<sup>4</sup> The need for telemetry operators to protect themselves against adjacent channel interference was driven home again five years later when, in 2002, the Commission reallocated the 2385-2390 MHz for a Part 27 fixed and mobile service that would operate adjacent to telemetry (just as WCS does). See Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order*, 17 FCC Rcd 9980 (2002) ["27 MHz Report and Order"]. Under the Part 27 rules for that service, licensees were required merely to attenuate their OOB by  $43 + 10 \log(p)$  into the telemetry band. See *id.* at 10046. Although the Commission ultimately reversed that allocation and returned the spectrum for exclusive use by the telemetry community as part of an arrangement to free spectrum from government use for the Advanced Wireless Service, the message to AFTRCC and its constituents could not have been clearer.

<sup>5</sup> AFTRCC Nov. 17, 2008 *Ex Parte*, Attachment at 2.



In addition, NextWave clarified its comments in its November 16, 2008, *ex parte* regarding mobile transmit power limits for the WCS C and D blocks and the WCS OOB limits for the 2320-2345 MHz band.<sup>6</sup> The WCS representatives indicated their willingness to amend WCS Coalition rule proposal of July 22, 2008, as follows:

§ 27.53 Emission limits.

(2) Notwithstanding §27.53(a)(1) of this chapter, for

- (a) any battery-operated user stations transmitting at no greater than 250 milliwatts average EIRP on all frequencies between 2305-2315 MHz and 2350-2360 MHz, and
- (b) any battery-operated user stations transmitting at no greater than 50 milliwatts/1 MHz average EIRP on all frequencies between 2315-2318 MHz and 2347-2350 MHz, and
- (c) any battery-operated user stations transmitting at no greater than 30 milliwatts/1 MHz average EIRP on all frequencies between 2318-2320 MHz and 2345-2347 MHz, and
- (d) any AC-operated user stations transmitting at no greater than 2 Watts average transmitter output power,

by a factor of not less than  $55+10 \log(P)$  dB on all frequencies between 2320 and 2324 MHz, and between 2341 and 2345 MHz; by a factor of not less than  $61+10 \log(P)$  dB for frequencies between 2324 and 2328 MHz, and between 2337 and 2341 MHz and by  $67+10 \log(P)$  dB between 2328 and 2337 MHz. All stations employing this less restrictive spectrum mask in lieu of that set forth in §27.53(a)(1) of this chapter shall incorporate a transmit power control mechanism to lower the output power from the maximum permitted power to a lower level sufficient to accomplish the desired communications;

This proposal with its stringent mask and reduced power limits would effectively preclude use of the 2 MHz closest to the SDARS band edges, thereby limiting the utility of the WCS C and D blocks for two-way broadband applications.<sup>7</sup> Recognizing that future technological developments may improve the ability of WCS licensees to further attenuate their C and D block OOB and that the opportunity exists for Sirius XM to improve its receiver performance relative to WCS operations, we believe that this compromise solution will facilitate immediate deployment of wireless broadband services in the WCS A and B blocks. Any additional restrictions on the A and B blocks, however, would jeopardize that objective.

<sup>6</sup> See Letter from Jennifer M. McCarthy, Vice President Regulatory Affairs, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, November 16, 2008 at 2.

<sup>7</sup> Were the standard  $43+10\log P$  out-of-band emission limit for the WCS A and B blocks that currently applies to the 2305 and 2360 MHz band edges also adopted at the SDARS band edges, this would provide maximum flexibility for two-way broadband services and enable greater harmonization and economies of scale for WCS mobile devices.



NextWave, Horizon and the other members of the WCS Coalition look forward to working with the FCC Commissioners and staff to bring this rulemaking to a rapid conclusion and enable Sirius XM, AFTRCC and its constituents, along with the WCS licensees to move forward and advance their service offerings in the public interest.

Respectfully submitted,

*/Jennifer M. McCarthy/*

Jennifer M. McCarthy  
Vice President, Regulatory Affairs  
NextWave Wireless Inc.

Cc: Charles Mathias  
Ronald Repasi