

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Part 27 of the)	
Commission’s Rules to Govern the)	WT Docket No. 07-293
Operation of Wireless Communications)	
Services in the 2.3 GHz Band)	
)	
Establishment of Rules and Policies for the)	IB Docket No. 95-91
Digital Audio Radio Satellite Service in the)	GEN Docket No. 90-357
2310-2360 MHz Frequency Band)	RM-8610

**OPPOSITION OF THE WCS COALITION TO THE ARRL
PETITION FOR CLARIFICATION OR PARTIAL RECONSIDERATION**

The WCS Coalition (“Coalition”), by its attorneys and pursuant to Section 1.429(f) of the Commission’s Rules, hereby opposes ARRL’s Petition for Clarification or Partial Reconsideration¹ with respect to the Commission’s *Report and Order and Second Report and Order* (“2010 WCS Order”) in the above-captioned proceedings.² As shown below, the ARRL Petition is procedurally flawed and fails on the merits.

In effect, ARRL is asking the Commission to revisit its 1997 decision to subject amateur users to secondary status in the 2300-2305 MHz band relative to Wireless Communications Service (“WCS”) licensees that have primary status in the adjacent 2305-2320 MHz band. Notwithstanding its recognition that amateur operations in the 2300-2305 MHz band are secondary,³ ARRL incongruously “objects to the Commission’s practice of making allocation

¹ Petition of ARRL for Clarification or Partial Reconsideration, WT Docket No. 07-293 *et al.* (filed Sept. 1, 2010) [“ARRL Petition”].

² See Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, *Report and Order and Second Report and Order*, FCC 10-82 (rel. May 20, 2010); *Erratum* (rel. June 8, 2010); *Second Erratum* (rel. July 14, 2010) [collectively “2010 WCS Order”].

³ ARRL Petition at 2.

decisions which place incompatible uses in close proximity to Amateur stations and then place on the Amateur licensees the burden of avoiding the interference.”⁴ ARRL thus urges the Commission to “clarify” that primary WCS users who comply with the various power limits, restrictions on out-of-band emissions (“OOBE”) and other technical rules imposed on WCS nonetheless are obligated under Section 2.102(f) of the Commission’s Rules to remedy any harmful adjacent channel interference to secondary amateur operations in the 2300-2305 MHz band.⁵ ARRL’s Section 2.102(f) argument is a red herring.

The Commission considered and resolved this issue over a decade ago in its 1996-1997 proceeding which established WCS – *a proceeding in which ARRL fully participated*. The *Notice of Proposed Rulemaking* in that proceeding (the “1996 NPRM”) could not have been more clear:

[T]he 2300-2310 MHz band is currently allocated to the amateur radio service on a secondary basis. . . . We do not propose any changes to these allocations at this time. *We reiterate, however, that these operations would be secondary to any WCS use of the 2305-2320 and 2345-2360 MHz bands.*⁶

ARRL filed comments on the *1996 NPRM* in which it acknowledged the language quoted above, but asked the Commission instead to give the amateur service primary status at 2300-2305 MHz,

⁴ *Id.* at 5.

⁵ *See id.* at 5-6.

⁶ Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (“WCS”), *Notice of Proposed Rule Making*, 11 FCC Rcd 21713, 21719 (1996) (emphasis added). *See also* Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (“WCS”), *Report and Order*, 12 FCC Rcd 10785, 10792 (1997) (stating, in discussing the *1996 NPRM*, “[w]e did not propose to change the Amateur Radio Service secondary allocation of the 2300-2310 MHz band, nor the authorization for the 2310-2360 MHz band to be used on a secondary basis by aeronautical telemetry operations.”) [*1997 WCS Order*].

claiming that “amateurs need and should be afforded protection from interference within the 2300-2305 MHz band.”⁷

In its *1997 WCS Order*, however, the Commission rejected ARRL’s proposal and maintained the amateur service’s secondary status at 2300-2305 MHz (in addition to giving WCS primary status in the adjacent 2305-2320 MHz band).⁸ The *1997 WCS Order* very clearly put amateur users on notice that they would have no recourse against WCS licensees:

We refer parties to 47 C.F.R. § 2.104(d)(4), which requires that stations of a secondary service shall not cause harmful interference to stations of primary services to which frequencies are already assigned or to which frequencies may be assigned at a later date. Also, *stations of a secondary service cannot claim protection from harmful interference from stations of a primary service to which frequencies are already assigned or may be assigned at a later date.*⁹

To reinforce that amateurs would not be protected against interference from new WCS operations, and “to better alert amateurs of their spectrum sharing responsibilities,” the Commission updated Section 97.303(j)(2) to state unequivocally that “[t]he 2300-2305 MHz segment is allocated to the amateur service on a secondary basis.”¹⁰ Particularly relevant to ARRL’s instant concern that WCS mobile operations may cause interference to amateurs,¹¹ the *1997 WCS Order* unambiguously reiterated that “amateur stations may not cause harmful interference to, nor are they protected from interference due to the operation of, mobile stations

⁷ See Comments of the American Radio Relay League, Inc., GN Docket No. 96-228, at 11 (filed Dec. 4, 1996) (“It is not sufficient to continue the secondary amateur allocation at 2300-2305. The commercial operations incoming above 2305 necessitate some stability in the long-term planning of the 2300-2305 MHz segment by amateurs to reaccommodate certain uses . . .”).

⁸ See *1997 WCS Order* 12 FCC Rcd at 10797, 10802.

⁹ *Id.* at 10802 n.74 (emphasis added). See also 47 C.F.R. § 2.105(c)(2)(ii).

¹⁰ *1997 WCS Order*, 12 FCC Rcd at 10802 n.75; see also *id.* at 10939 (Appendix B, adding Section 97.303(j)(2)(i)).

¹¹ See ARRL Petition at 3.

authorized in Region 1 (this is in addition to fixed operations).”¹² ARRL did not seek reconsideration of the *1997 WCS Order*.¹³

Now, over thirteen years later, ARRL would have the Commission reverse itself and for the first time afford the amateur service at 2300-2305 MHz interference protection rights against adjacent channel WCS licensees. Yet, ARRL did not make its request by filing a petition for rulemaking seeking modification of Section 97.303(j)(2) of the Rules. Nor did ARRL do so by filing comments in response to the December 18, 2007 *Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking* in this proceeding (the “2007 NPRM”).¹⁴ Rather, ARRL awaited the conclusion of this proceeding, and then submitted a petition for reconsideration that asks the Commission to “clarify” a rule that was not the subject of discussion at any time in this proceeding.¹⁵

As a result, the ARRL Petition is fatally flawed. The subject of the amateur service’s secondary status relative to WCS was not raised by the *2007 NPRM*, nor would a change in the rules and policies adopted by the *1997 WCS Order* with respect to such secondary status be a

¹² *1997 WCS Order* at 10802 n.75.

¹³ In a subsequent proceeding, ARRL also filed a petition for rulemaking in which it asked the Commission to upgrade the amateur service to primary status in the 2300-2305 MHz band. *See* ARRL Petition for Rulemaking, RM-10165 (filed May 7, 2001). The Commission’s Office of Engineering and Technology dismissed ARRL’s petition for rulemaking in 2002, reaffirming that “the secondary allocation for the amateur service will be maintained.” Allocation of Electromagnetic Spectrum Pursuant to Title III of the Balanced Budget Act of 1997 and Amendment of Part 90 of the Rules to Establish a New Subpart Y – Personal Location and Monitoring Service, *Order*, 17 FCC Rcd 19711, 19712 (OET 2002).

¹⁴ *See* Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, *Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking*, 22 FCC Rcd 22123 (2007).

¹⁵ To the extent that ARRL is suggesting that a secondary licensee generally is entitled to protection from adjacent channel (as opposed to cochannel) primary licensees, that position has been flatly rejected by the Commission in, ironically, at least one case involving the amateur service. *See* Allocation of the 219-220 MHz Band for Use by the Amateur Radio Service, *Report and Order*, 10 FCC Rcd 4446, 4451 (1995) [“219-220 MHz Order”].

logical outgrowth of any of the issues raised in the 2007 NPRM. Thus, the amateur service's secondary status is not ripe to be revisited and the ARRL Petition should be dismissed as beyond the scope of this proceeding.¹⁶ Moreover, the ARRL Petition is predicated on factual arguments regarding the difficulties amateurs would face in avoiding interference from WCS that have not heretofore been advanced in this proceeding.¹⁷ Yet, ARRL ignores the implications of Section 1.429(b) of the Commission Rules and makes no effort to establish that these new facts either "relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission" or "were unknown to petitioner until after [its] last opportunity to present them to the Commission."¹⁸

Should the Commission nonetheless choose to entertain the ARRL Petition, it should reject ARRL's Section 2.102(f) argument for the simple reason that, whatever its scope may be, Section 2.102(f) does not afford protection to a secondary service that is adjacent to a primary one.¹⁹ Not surprisingly, ARRL can point to no authority for the proposition that Section 2.102(f)

¹⁶ See, e.g., Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606, 5630 (2006) (dismissing a petition for reconsideration as outside the scope of the rulemaking proceeding).

¹⁷ See ARRL Petition at 3-4.

¹⁸ 47 C.F.R. § 1.429(b)(1)-(2); see also *Advanced Television Systems And Their Impact Upon the Existing Television Broadcast Service*, *Order*, 14 FCC Rcd 11572 (MMB 1999) (petition for reconsideration found to be procedurally defective under Section 1.429(b); Bureau found that petitioner should have sought reconsideration of a prior *Order* in the same proceeding). Although its argument is somewhat unclear, ARRL seems to claim that it had "no cause to participate earlier in this proceeding" until it noticed that the 2010 WCS *Order* did not identify amateur radio as an interference-protected service. ARRL Petition at 2. Since the amateur service has *always* had secondary status at 2300-2305 MHz and *never* had interference protection rights against WCS licensees, it is hard to understand how this constitutes unfair surprise. Aside from its newfound (and incorrect) reliance on Section 2.102(f) of the Commission's Rules, ARRL does not explain how it could have believed that a secondary service would have interference protection rights against a primary service in adjacent spectrum, notwithstanding decades of Commission law to the contrary.

¹⁹ The history of the rule suggests that, notwithstanding its broad language, the Commission intended that it only apply for limited purposes to land mobile services in the 152-162 MHz and the 450-460 MHz

supersedes the Table of Frequency Allocations to give a secondary service the right to interference protection against a primary service.²⁰

To the contrary, when the Commission adopted the *1997 WCS Order*, Section 2.102(f) was in effect and yet, as discussed above, the Commission stated with crystalline clarity that amateur users would not receive interference protection from new WCS licensees.²¹ That was hardly surprising, since two years earlier the Commission had similarly ruled that while a new amateur secondary service would be required by Section 2.102(f) to protect a primary service from interference by adjusting its operating frequencies, that secondary amateur service would not be entitled to protection from an adjacent primary service.²² And, of course, these rulings are

bands. *See* Part 2—Frequency Allocations and Radio Treaty Matters; General Rules and Regulations *et al.*, *Order*, 23 Fed. Reg. 3351 (1958) (“This order is intended to provide, so far as Part 2 is concerned, for the assignment of ‘split-channel’ frequencies to those services not covered in the first memorandum report and order in the 152-162 Mc band and to the Public Safety Radio Service only, at this time, in the 450-460 Mc band.”). Not surprisingly, then, the rule has rarely been cited. In the view of the WCS Coalition, there is no rationale for applying it, even as between primary services, where (as here) the Commission has adopted specific OOB limitations.

²⁰ At one point ARRL also appears to argue that amateur users at 2300-2305 MHz should be entitled to treatment as a primary service because the Commission has yet to give any other service a primary allocation in that spectrum. *See* ARRL Petition at 2 (“Amateur operations [at 2305-2310 MHz] are not protected from interference from WCS facilities However, the lower portion of the Amateur allocation, 2300-2305 MHz, though secondary as well, is secondary to no other radio service.”). This was exactly the case when the Commission issued the *1997 WCS Order*, yet the Commission still held that amateur users at 2300-2305 MHz would be secondary to *all* primary services and thus would have no interference protection rights against primary services in *any* spectrum, including the 2305-2320 MHz band. It appears ARRL has always understood this to be so – otherwise, it is difficult to see why ARRL would have thought it necessary in the early 2000s to invest time and resources towards attempting to obtain a primary allocation for the amateur service at 2300-2305 MHz (*see supra* note 13).

²¹ *See supra* pp. 3-4.

²² *See 219-220 MHz Order*, 10 FCC Rcd at 4451 (“Finally, regarding protection of adjacent channel primary services, we believe that our current rules, the new rules we are adopting herein, and the competence of the amateurs using this band should be sufficient to protect adjacent channel operations. We do not agree with ARRL's opposition to our rule protecting primary operations in and adjacent to the 219-220 MHz band from amateur operations. Television and IVDS operations have a primary allocation and therefore are afforded protection from secondary operations. We do recognize that receiver selectivity and intermodulation distortion characteristics are matters of design, and expect receivers to be designed consistent with good engineering practice. Additionally, our rules require that stations of a service shall use frequencies sufficiently separated from the limits of a band allocated to that service so as

consistent with a common sense understanding of the Table of Frequency Allocations, since any ruling that Section 2.102(f) imposes on primary services an obligation to protect secondary services from harmful interference would be impossible to square with Section 2.105(c)(2)(ii)'s directive that a secondary licensee "[c]annot claim protection from harmful interference from stations of a primary service to which frequencies are already assigned or may be assigned at a later date."²³ Such a ruling would, however, throw the Table and those who rely on it into chaos with no countervailing benefit to the public.

Finally, ARRL's proposal for affording the secondary amateur allocation at 2300-2305 MHz with protection against interference fails to consider, much less resolve, the adverse consequences that adoption of its proposal would have on the deployment of broadband in the 2.3 GHz band. According to ARRL, as of June 30, 2010, there were nearly 700,000 licensed amateur radio operators in the United States, nearly all of whom are eligible to operate in the 2300-2305 MHz band.²⁴ ARRL has also confirmed that the Commission continues to issue new amateur licenses at a healthy pace.²⁵ Moreover, the amateur service is not licensed according to

not to cause harmful interference to services in immediately adjoining frequency bands. Accordingly, amateur operations in the 219-220 MHz band are not permitted to interfere with, nor are protected from interference by, primary service operations in and adjacent to the 219-220 MHz band.") (citations omitted).

²³ 47 C.F.R. § 2.105(c)(2)(ii).

²⁴ See ARRL News, *First Half of 2010 Sees Upswing in New Amateur Radio Licenses* (July 13, 2010), <http://www.arrl.org/news/first-half-of-2010-sees-upswing-in-new-amateur-radio-licenses> ["ARRL News 2010 Upswing"] (last visited Oct. 8, 2010). Under Section 97.301(a) of the Commission's Rules, only amateur operators in the Novice class are ineligible to operate in the 2300-2005 MHz band. See 47 C.F.R. § 97.301(a). According to the ARRL statistics cited above, as of June 30, 2010, only 16,299 of the nearly 700,000 licensed amateur operators were in the Novice class.

²⁵ See ARRL News 2010 Upswing, <http://www.arrl.org/news/first-half-of-2010-sees-upswing-in-new-amateur-radio-licenses> (last visited Oct. 8, 2010) ("With more than 18,000 new Amateur Radio licenses issued in the first half of this year . . . 2010 is shaping up to be a banner year for Amateur Radio. So far, the number of new licenses issued by the FCC in 2010 is outpacing the January-June 2009 totals by almost 8.5 percent . . .").

site location or any other sort of geography – rather, an amateur operator is licensed individually according to his or her level of expertise and is permitted to operate amateur radio facilities anywhere in the country (subject to certain limited geographic restrictions in the Commission’s Part 97 rules).²⁶ Yet, ARRL fails to address how WCS licensees would identify where, when and how amateur radio operators are operating in the 2300-2305 MHz band.

Furthermore, this eleventh-hour AARL Petition thoroughly would upset the Commission’s efforts to accommodate the various primary services in the 2.3 GHz band to permit new broadband services without causing undue interference. Accommodating the secondary amateurs as well might require wasting scarce WCS spectrum for an unnecessary guardband or reducing power levels, even at the risk of rendering broadband service unavailable. The Commission has invested substantial resources to develop rules under which WCS will contribute 20 MHz towards the National Broadband Plan’s goal of identifying 300 MHz of additional spectrum for broadband services.²⁷ Now that substantial progress finally has been made to that end, there is no public interest justification whatsoever for the Commission to reverse course after 14 years and absolve amateur operations of their obligation to resolve any interference they may receive from adjacent channel WCS licensees. To hold otherwise would represent a breach of faith with the WCS community and severely compromise the Commission’s larger objective of facilitating deployment of new wireless broadband services over WCS spectrum.²⁸

²⁶ See Amendment of Part 97 of the Commission’s Rules Regarding the Amateur Radio Service, *Order*, 8 FCC Rcd 7284 (PRB 1993) (deleting requirement that an amateur radio application specify station location).

²⁷ See Federal Communications Commission Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, 84-86 (2010) (Recommendation 5.8.1 and Exhibit 5-E).

²⁸ See *2010 WCS Order* at ¶ 36 (“In this Report and Order, we also seek to promote broadband competition and facilitate the development and provision of innovative broadband services, including

WHEREFORE, for the reasons set forth above, the WCS Coalition requests that the Commission dismiss ARRL's Petition on procedural grounds or, in the alternative, deny the Petition on the merits.²⁹

Respectfully submitted,

THE WCS COALITION

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mobile broadband services, to the American public in the 2305-2320 and 2345-2360 MHz bands allocated to WCS. The actions we take in this order are designed to further our strategic broadband goal that "[a]ll Americans should have affordable access to robust and reliable broadband products and services." (citations omitted).

²⁹ ARRL also asks the Commission to clarify that the $43 + 10 \log (P)$ OOB attenuation factor for WCS devices applicable at 2305 MHz apply across the entirety of the 2300-2305 MHz band. *See* ARRL Petition at 1. The WCS Coalition has no objection to this clarification.

CERTIFICATE OF SERVICE

I, Jennifer L. Canose, hereby certify that the foregoing Opposition of the WCS Coalition to the ARRL Petition for Clarification or Partial Reconsideration was served this 18th day of October, 2010, by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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