

July 21, 2011

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) -- ORAL EX PARTE PRESENTATION

Dear Ms. Dortch:

I am writing pursuant to Section 1.1206(b)(2) of the Commission's Rules to notify the Commission that on July 19, 2011, Jennifer McCarthy of NextWave Broadband, Inc., Ron Olexa of Horizon Wi-Com, LLC, Kurt Schaubach of Conexus Technology Advisors and the undersigned, on behalf of the WCS Coalition, met with Julius Knapp, Ron Repasi, and John Kennedy of the Office of Engineering and Technology, Paul Moon and Zhi Li of the Wireless Telecommunications Bureau, and David Strickland of the International Bureau to discuss issues arising out of the pending petitions for reconsideration of the *Report and Order and Second Report and Order* in the above reference proceedings.¹

The WCS Coalition stressed the importance of technological neutrality in the rules governing Wireless Communications Service ("WCS"). To that end, the WCS Coalition reiterated its position that the newly-adopted duty cycle limitations for time division duplex ("TDD") were too stringent for Long Term Evolution ("LTE"), and that at a minimum the rules should be revised to permit TDD duty cycles of at least 44 percent.² The WCS Coalition also argued that a duty cycle or activity factor restriction is inconsistent with the manner in which frequency division duplex ("FDD") technologies are designed to operate.³ Unlike TDD systems (which inherently limit upstream transmissions to a portion of each frame to make time available for downstream transmissions), FDD systems are designed to maximize the efficient use of the spectrum among all users. It was noted that, while as a practical matter no single user is likely to monopolize upstream system resources for an appreciable amount of time because the system

¹ 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*, 25 FCC Rcd 11710 (2010) [*"Report and Order"*].

² See Petition of the WCS Coalition for Partial Reconsideration, WT Docket No. 07-293, at 7 (filed Sept. 1, 2010) [*"WCS Coalition Petition"*].

³ See *id.*

Marlene H. Dortch

July 21, 2011

Page 2

shares those resources among multiple users, FDD systems are not designed to artificially throttle the percentage of time a user station can transmit in the absence of competing demands for system resources.

The WCS Coalition also confirmed its continuing opposition to the Commission's imposition of a 50 mW per MHz power spectral density limit on mobile devices.⁴ It was stressed that the 50 mW/MHz power spectral density limit (and indeed any spectral density limit) is inconsistent with the manner in which mobile 2.3 GHz equipment is designed, as current and forecast mobile devices lack the capability to adjust power proportionally with occupied bandwidth.⁵ The WCS Coalition also reiterated its opposition to the proposal by Sirius XM Radio Inc. ("Sirius XM") to impose a power spectral density limit on fixed customer premises equipment ("CPE"), for the reasons set forth in the record.⁶

The WCS Coalition restated its prior arguments as to why the ban on antennas associated with low-powered CPE should be modified, if not entirely eliminated.⁷ The parties also discussed a number of coordination and notice issues. In particular, the WCS Coalition again called for the Commission to clarify that the reference to ITU-R M.1459 in Section 27.73(a) was not intended to mandate hard limits for coordination with aeronautical mobile telemetry systems, repeating arguments recently made by the WCS Coalition in an *ex parte* presentation.⁸ The WCS Coalition also reaffirmed its position that the definition of "potentially affected licensees" should not be altered for Section 25.263(b)(1), noting that it will be impossible for WCS licensees to comply with the Commission's rules regarding satellite Digital Audio Radio Service ("SDARS") protection if they do not have a database setting forth where the SDARS repeaters are located within their licensed service areas.⁹ In addition the WCS Coalition reviewed the

⁴ See *id.* at 14. See also Petition of AT&T Inc. for Partial Reconsideration, WT Docket No. 07-293, at 14-16 (filed Sept. 1, 2010); Reply of AT&T Inc. to Oppositions of Sirius XM Radio Inc., Aerospace and Flight Test Radio Coordinating Council, and the Boeing Company to the Petition for Partial Reconsideration, WT Docket No. 07-293, at 3-4 (filed Nov. 1, 2010) ["AT&T Reply"].

⁵ See WCS Coalition Petition at 14; Opposition of AT&T Inc. to Petition for Partial Reconsideration and Clarification of Sirius XM Radio Inc.; Petition for Reconsideration of Green Flag Wireless, LLC, *et al.*; and Petition for Clarification or Partial Reconsideration of ARRL, WT Docket No. 07-293, at 3-4 (filed Oct. 18, 2010) ["AT&T Opposition"]; AT&T Reply at 3-4.

⁶ See Opposition of the WCS Coalition to Petition of Sirius XM Radio Inc. for Partial Reconsideration and Clarification, WT Docket No. 07-293, at 14 (filed Oct. 18, 2010); AT&T Opposition at 2-5.

⁷ See WCS Coalition Petition at 12.

⁸ See Letter from Paul J. Sinderbrand, Counsel to WCS Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-293 (filed June 17, 2011).

⁹ See Letter from Paul J. Sinderbrand, Counsel to WCS Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-293 (filed May 9, 2011).

Marlene H. Dortch

July 21, 2011

Page 3

rationale for its proposed amendment to the rules allowing certain modifications to both base station and repeaters without advance notice.¹⁰

The WCS Coalition also took issue with the claim Sirius XM that can exceed the power limits set forth in Section 25.214(d)(1) and the out-of-band emission limits set forth in Sections 25.202(h)(1) and (2) without meeting the well-established standards for waiver of Commission rules. It was noted that the *Report and Order* made clear that “the operation of such non-compliant repeaters must be applied for and authorized under individual site-by-site licenses using Form 312, and appropriate waiver of the Commission’s rules must be requested for non-compliant operations.”¹¹ Having found that those limits are necessary to protect subscribers to WCS-based service offerings, the Commission should not allow Sirius XM to violate them absent a compelling waiver showing.

Pursuant to Sections 1.1206(b)(2) and 1.49(f) of the Commission’s Rules, this letter is being filed electronically with the Commission via the Electronic Comment Filing System. Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Mary N. O’Connor

Counsel to the WCS Coalition

cc: Julius Knapp
Ron Repasi
John Kennedy
David Strickland
Paul Moon
Zhi Li

¹⁰ See WCS Coalition Petition at 18-20.

¹¹ *Report and Order*, 25 FCC Rcd at 11813 (emphasis added). To eliminate any confusion, the WCS Coalition has urged the Commission to modify Section 25.144(e)(9) to specify that a SDARS licensee seeking to deploy a terrestrial repeater that is non-compliant with the Commission’s technical rules must not only file a site-based application, but must demonstrate that a waiver of those technical rules is warranted. See WCS Coalition Petition at 21-22.