

May 22, 2008

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:

On at least three occasions of late, XM Radio Inc. ("XM") and Sirius Satellite Radio Inc. ("Sirius") have provided the Commission staff with presentations asserting that the "current record is sufficiently complete" for the Commission to move forward in these proceedings.<sup>1</sup> While the WCS Coalition does not agree with XM and Sirius on much, on that point we are in full agreement – the testing that the two sides have done provides the Commission with ample basis to move forward. However, earlier this week, XM and Sirius filed with the Commission a self-styled "outline of a joint test plan" that they claim will "expedite completion" of these proceedings if implemented.<sup>2</sup> The WCS Coalition urges the Commission to see this for what it is – *a transparent ploy to delay resolution of these proceedings to the detriment of the Wireless Communications Service ("WCS") licensees.*

XM and Sirius know full well that delay works to their advantage. After all, they continue to operate their repeaters (albeit not always legally), while WCS licensees must wait for the rule changes pending in these dockets before they can deploy mobile wireless broadband systems. The plan of action that XM and Sirius now advance would effectively delay any resolution of these proceedings for a minimum of nine to twelve months. That is because to add

---

<sup>1</sup> See Letter from Patrick L. Donnelly and James S. Blitz, IB Docket No. 95-91, *et al*, Attachment at 24 (filed May 14, 2008); Letter from Patrick L. Donnelly and James S. Blitz, IB Docket No. 95-91, *et al*, Attachment at 24 (filed May 9, 2008); Letter from Patrick L. Donnelly and James S. Blitz, IB Docket No. 95-91, *et al*, Attachment at 24 (filed April 25, 2008).

<sup>2</sup> Letter from Patrick L. Donnelly and James S. Blitz, IB Docket No. 95-91, *et al*, at 1-2 (filed May 19, 2008).

Marlene H. Dortch

May 22, 2008

Page 2

anything of value to the record, further testing will have to approximate real world operating conditions, accounting for all of the many variables that make it so unlikely WCS mobile devices will cause harmful interference to satellite Digital Audio Radio Service (“SDARS”) subscribers.<sup>3</sup> The test plan outline XM and Sirius submitted does nothing to account for such variables.

Rather, the brief outline presented by XM and Sirius trivializes the issues before the Commission, painting with such a broad brush that it does not even identify, much less propose solutions to, the many thorny questions that would have to be addressed before testing could commence. What constitutes harmful interference to SDARS receivers, WCS mobiles and WCS base stations? The question has been hotly debated during these proceedings, and should be resolved by the Commission before any tests are conducted. Where will the test bed be constructed? The propagation environment is very different in urban, suburban or rural areas, and the specific location of the test bed will impact the results.<sup>4</sup> Thus, the test plan will have to assure that the selection of the test bed site does not game the results of the testing. What SDARS receivers will be used in any testing? The record shows that while some include filtering of WCS signals, others do not. How will the testing simulate the behavior of a WCS mobile user? The actual power at which he is transmitting (which with transmit power control is constantly changing as a function of distance to the nearest base station, fading and other factors), the speed at which he is moving, the angle of his antenna relative to the SDARS antenna, the WCS channel block he is using, how often and for how long he transmits, the existence and duration of obstructions (body parts, automobiles, etc.) between the SDARS receiver and his WCS transmit antenna all have to be factored into a test plan.<sup>5</sup> These and a host of other issues will have to be resolved before testing can begin.

Moreover, WCS equipment for the test bed is not readily available. In conducting their testing to date, both sides have relied on laboratory equipment, which is certainly appropriate given the nature of the testing that has been conducted. However, it makes no sense to engage in joint testing that merely replicates those laboratory tests – for joint testing to add anything of value to the record it must evaluate potential interference under real world conditions. And to do that requires WCS mobile and base station equipment that has performance characteristics similar to that of the devices that will be deploy in the United States. Unfortunately, while the 2.3 GHz band is being utilized in other nations for wireless broadband services, the channelization and spectral mask requirements of equipment currently manufactured for the global market does not conform to the technical standards being proposed in this proceeding. As a result, no WCS equipment is currently available for construction of an appropriate test bed.

---

<sup>3</sup> Those variables are have previously been identified by the WCS Coalition. *See* Letter from Paul J. Sinderbrand, Counsel to WCS Coalition, to Marlene H. Dortch, FCC Secretary, WT Docket No. 07-293 *et al*, Attachment at 21 (filed May 5, 2008)[“WCS Coalition May 5, 2008 *Ex Parte*”].

<sup>4</sup> For example, even in an urban area, the results will be quite different if the test bed is in a dense downtown area where signals are readily attenuated by buildings, cars and people and vehicles move slowly, as compared to being near a highway where vehicles move more rapidly and the sources of attenuation will differ.

<sup>5</sup> *See* WCS Coalition May 5, 2008 *Ex Parte*, Attachment at 21.

Marlene H. Dortch

May 22, 2008

Page 3

This is hardly news – the WCS Coalition identified equipment availability as an impediment to further testing when it met with the Commission staff and the SDARS licensees last week. As a practical matter, it likely would take several months for equipment vendors to modify equipment designs developed for the global market to comport with the United States’ band plan and spectral masks proposed by WCS and SDARS interests.

In conclusion, while XM and Sirius claim that it will only take two weeks to complete testing once the equipment is in place, that rosy projection (which the WCS Coalition believes is at least two weeks shy of what will be required to capture a meaningful range of results) ignores the months that will be spent developing a joint test plan and securing appropriate prototype IEEE 802.16e-2005 equipment. As the WCS Coalition stressed last week, WCS licensees are willing to participate in a joint testing program *if* the Commission believes that such a joint testing program will assist it in resolving any open issue and is prepared to play an active role in crafting an appropriate test plan.<sup>6</sup> However, given that: (a) both sides believe the current record is adequate; (b) to our knowledge, the Commission staff has not identified a single issue of decisional significance that requires further testing; and (c) every day SDARS’ delaying tactics are entertained further delays the resolution of these proceedings and the deployment of much-needed wireless broadband services using WCS spectrum, the best course of action is for the Commission to move promptly to modify Parts 25 and 27.

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

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel to the WCS Coalition

cc: Aaron Goldberger  
Bruce Gottlieb  
Renee Crittendon  
Wayne Leighton  
Angela Giancarlo  
Helen Domenici  
Julius Knapp

---

<sup>6</sup> See Letter from Paul J. Sinderbrand, Counsel to WCS Coalition, to Marlene H. Dortch, FCC Secretary, WT Docket No. 07-293 *et al* (filed May 13, 2008).

Marlene H. Dortch

May 22, 2008

Page 4

Roderick Porter  
Joel Taubenblatt  
Ira Keltz  
Ron Repasi  
Geraldine Matisse  
Bruce Romano  
Alan Stillwell  
Robert Nelson  
Roger Noel  
Thomas Derenge  
Linda Chang  
David Hu  
Stephen Duall  
Steven Spaeth  
Shabnam Javid  
Jay Jackson  
Moslem Sawez