

WILKINSON) BARKER) KNAUER) LLP

2300 N STREET, NW
SUITE 700
WASHINGTON, DC 20037
TEL 202.783.4141
FAX 202.783.5851
www.wbklaw.com
PAUL J. SINDERBRAND
psinderbrand@wbklaw.com

May 30, 2008

Hon. Kevin J. Martin
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc. (MB Docket No. 07-57); 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 Chairman Martin:

In conjunction with the proposed merger of XM Radio Inc. ("XM") and Sirius Satellite Radio Inc. ("Sirius"), the Commission has before it several proposals calling for the Commission to condition any authorization of the merger either upon divestiture of satellite Digital Audio Radio Service ("SDARS") spectrum in the 2320-2345 MHz band or upon leasing a portion of the merged company's capacity to third-party program suppliers. The WCS Coalition takes no position as to whether the Commission should impose either type of condition upon the merged entity. However, if the Commission is disposed towards imposing any conditions, or accepting any conditions that XM and Sirius might voluntarily offer, the WCS Coalition urges that the Commission act consistent with its objective in IB Docket No. 95-91 and WT Docket No. 07-293 of promoting the reasonable coexistence of the Wireless Communications Service ("WCS") and SDARS.

If nothing else, care must be taken to avoid compromising the Commission's ability in IB Docket No. 95-91 and WT Docket No. 07-293 to develop a set of rules that will provide for the reasonable coexistence of the two services. To cite one example, a leasing condition will not result in the deployment of additional terrestrial SDARS repeaters that pose a threat of interference to WCS base stations and mobile units, since presumably the condition would require the merged entity to carry third-party programming on both the SDARS terrestrial repeater network and the SDARS satellite system. By contrast, if the merged entity is required to divest spectrum, the acquirer of the divested spectrum may desire to construct its own terrestrial repeater network. Were that to occur, WCS licensees would be faced with an additional source

WILKINSON) BARKER) KNAUER) LLP

Hon. Kevin J. Martin

May 30, 2008

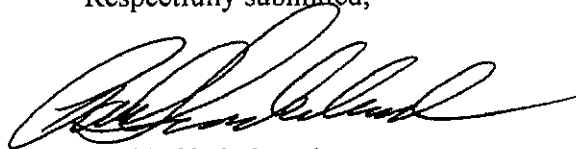
Page 2

of potential interference that could undermine the offering of broadband services. That is not to say, however, that a leasing condition would necessarily be benign – the Commission should not require third-party leased access to the SDARS systems in a manner that leads either of the SDARS systems to eliminate any of the three redundant data streams that provide protection against interference from WCS to SDARS receivers. The record before the Commission establishes that even where one of the redundant streams suffers harmful WCS interference, it is highly likely that at least one of the others will not be adversely impacted. So long as one of the redundant streams is free of harmful interference, receiver muting will not occur and the SDARS subscriber will not suffer any disruption to his or her listening. Thus, retention of the present redundancy is critical in promoting WCS/SDARS coexistence.

Not only should the Commission assure that no divestiture condition harm WCS/SDARS coexistence, but it should consider specific ways in which a divestiture condition can affirmatively facilitate coexistence. For example, by placing low-powered satellite transmissions immediately adjacent to the WCS spectrum, XM and Sirius have designed their systems in a manner that makes them more vulnerable to WCS out-of-band emission interference than if they placed their higher-powered terrestrial repeaters at the band edge (which would result in approximately 4 MHz of buffer between any satellite signal and WCS transmissions). Compounding matters, unlike Sirius, XM has clustered half of its channels in an “ensemble” immediately adjacent to the WCS band without frequency block diversity, again making those channels more vulnerable to interference. Moreover, some SDARS receivers have proven to be more vulnerable to interference than others. Make no mistake -- the WCS Coalition has demonstrated that mobile WCS operations can be deployed notwithstanding any of these SDARS vulnerabilities. However, if the Commission is disposed to require a SDARS divestiture to facilitate new entry, it has an opportunity to avoid a repeat of past mistakes. While at this juncture insufficient information is available to the WCS Coalition regarding the Commission’s divestiture thinking to advance any particular proposal, the members of the WCS Coalition are ready, willing and able to answer any questions the Commission staff might have related to the impact of any divestiture proposal on WCS licensees.

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,



Paul J. Sinderbrand

Counsel to the WCS Coalition

WILKINSON) BARKER) KNAUER) LLP

Hon. Kevin J. Martin

May 30, 2008

Page 3

cc: Hon. Michael J. Copps
Hon. Jonathan S. Adelstein
Hon. Deborah Taylor Tate
Hon. Robert M. McDowell
Aaron Goldberger
Bruce Gottlieb
Renée Crittendon
Wayne Leighton
Angela Giancarlo
Monica Desai
Helen Domenici
Julius Knapp
James Schlichting
Kris Monteith