

COPY

WILKINSON) BARKER) KNAUER) LLP

S2710 SAT-LOA-20060901-00096 IB2006002477
Sirius Satellite Radio Inc.
SIRIUS FM-5

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 1, 2007

RECEIVED - FCC

Helen Domenici
Chief, International Bureau
Federal Communications Commission
Washington, DC 20554

MAY - 1 2007

Federal Communications Commission
Bureau / Office

Fred Campbell
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
Washington, DC 20554

Re: *Establishment of Rules and Policies for the Satellite Digital Audio Radio Service in the 2310-2360 MHz Band – IB Docket No. 95-91*
Applications of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. for Consent to Transfer of Control – MB Docket No. 07-57
Application of Sirius Satellite Radio Inc. for Authority to Launch and Operate SIRIUS FM-5, a Geostationary Satellite, to Provide Satellite Digital Audio Radio Service –SAT-LOA-20060901-00096
WRITTEN EX PARTE COMMUNICATION

Dear Ms. Domenici and Mr. Campbell:

I am writing on behalf of the WCS Coalition regarding the response by Sirius Satellite Radio Inc. (“Sirius”) to the Coalition’s concerns regarding Sirius’ plans to commence the provision of video services over its Digital Audio Radio Service (“DARS”) spectrum later this year.¹

Between the Coalition’s initial letter expressing its concerns and Sirius’ response, the material facts regarding the Sirius Backseat TV service are now a matter of record, and the Commission would appear to have all the information it needs to determine whether that service

¹ See Letter from Robert L. Pettit, Counsel to Sirius Satellite Radio Inc., to Helen Domenici, Chief, International Bureau, Federal Communications Commission, and Fred Campbell, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, IB Docket No. 95-91 (filed April 25, 2007).

Ms. Domenici and Mr. Campbell
May 1, 2007
Page 2

is an “ancillary service” despite Sirius’ candid acknowledgement that it will utilize up to 20% of Sirius’ authorized spectrum for the transmission of video programming.²

More importantly, the WCS Coalition is pleased with Sirius’ concession that under Section 4.4 of the ITU Radio Regulations, the Commission specifically must preclude any Sirius’ video offerings in the DARS band from causing interference to the Wireless Communications Service (“WCS”), and bar Sirius from claiming protection against interference to its video offering from WCS.³ Thus, if the Commission finds on the record before it that Sirius Backseat TV is a permitted “ancillary service,” the Commission must do as it has done in similar situations and condition Sirius’ operating authority consistent with Section 4.4 of the ITU Radio Regulations, making any video offerings by Sirius secondary to WCS operations.⁴

Should you have any questions regarding this submission, please contact the undersigned. Pursuant to Section 1.1206(b) of the Commission’s Rules, a copy of this letter is being filed in the dockets referenced above utilizing the Electronic Comment Filing System.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel to the WCS Coalition

² See *id.* at 3 (“the back-seat video offering will operate in less than one-fifth of Sirius’ exclusively-licensed band.”).

³ See *id.* at 4 n.15 (quoting ITU Rad. Reg. § 4.4). Under similar circumstances, the Commission has not hesitated to impose the conditions required by Section 4.4 of the ITU Radio Regulations. See, e.g. *Intelsat LLC, Application to Modify Authorization for Intelsat 805 to Allow the Provision of Fixed-Satellite Service Between Non-U.S. Points in the 12.7-12.75 GHz Frequency Band*, Order and Authorization, 19 FCC Rcd 2775, 2776 (2004); *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, 2066 (2003) (“ITU Radio Regulations provide for the operation of communications systems that do not conform to the service allocation, provided that the services are on a non-harmful interference basis.”).

⁴ Subject to the imposition of such conditions on Sirius’ video operations, the WCS Coalition withdraws its request for rescission of the license issued to Sirius for authority to operate the satellite it calls FM-5. Although the Coalition believes, notwithstanding Sirius’ arguments to the contrary, that Sirius’ application for this satellite was defective for failure to provide the specific information required by Section 25.144(a)(3)(iii) of the Commission’s Rules, the imposition of the conditions even Sirius agrees are required by Section 4.4 of the ITU Radio Regulations mitigates any harm to the WCS Coalition’s members.

Although the point is moot in light of the WCS Coalition’s withdrawal of its request for rescission of the FM-5 license, the Commission should note that the WCS Coalition had no reason to object to the grant of that license during the period normally afforded for petitions to deny because Sirius did not announce its arrangement with DaimlerChrysler AG’s Chrysler Group until after that period had run. See, e.g., *Chrysler Minivans to Offer Satellite TV*, THE WALL STREET JOURNAL, at B3 (March 30, 2004); James Healy, *Chrysler, Sirius to Beam Kids’ TV Into ‘08 Models*, USA TODAY, at 1B (March 30, 2007).

WILKINSON) BARKER) KNAUER) LLP

Ms. Domenici and Mr. Campbell
May 1, 2007
Page 3

cc: Hon. Kevin J. Martin
Hon. Michael J. Copps
Hon. Jonathan S. Adelstein
Hon. Deborah Taylor Tate
Hon. Robert M. McDowell
Erika Olsen
Bruce Gottlieb
Barry Ohlson
Aaron Goldberger
Angela Giancarlo
Julius Knapp
Robert Nelson
Roderick Porter
Robert Pettit, Counsel to Sirius Satellite Radio Inc.