

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 27 of the Commission's	)	WT Docket No. 07-293
Rules to Govern the Operation of Wireless	)	
Communications Services in the 2.3 GHz Band	)	

**COMMENTS REGARDING PAPERWORK REDUCTION ACT COMPLIANCE**

The WCS Coalition, by its attorneys, hereby submits these comments to address the Commission's failure to comply with the requirements of the Paperwork Reduction Act of 1995, as amended (the "PRA")<sup>1</sup> in connection with the adoption of the *Report and Order* in this proceeding.<sup>2</sup> Specifically, by adopting Section 27.72(b) of the Rules, which requires Wireless Communications Service ("WCS") licensees to provide Sirius XM Radio Inc. ("Sirius XM") with a minimum of five days advance written notice prior to making virtually any modification to a WCS base station (regardless of whether the modification poses any realistic threat of interference), the Commission has imposed on WCS licensees an unnecessary, unreasonable and unsupportable paperwork burden that directly contravenes the PRA.<sup>3</sup>

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<sup>1</sup> Information Collection Being Reviewed by the Federal Communications Commission, 76 Fed. Reg. 32360 (June 6, 2011).

<sup>2</sup> 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"*].

<sup>3</sup> As the WCS Coalition has previously advised the Commission, it has no quarrel with the Commission's decision to require WCS licensees to give ten days advance notice before deploying a new WCS base station. *See, e.g.*, Petition of the WCS Coalition for Partial Reconsideration, WT Docket No. 07-293, at 18-19 (filed Sept. 1, 2010) [*"WCS Coalition Petition for Reconsideration"*]; Comments of the WCS Coalition, WT Docket No. 07-293, at 14 (filed Apr. 23, 2010) [*"WCS Coalition Technical PN Comments"*] ("Because new WCS base stations (and relocated base stations) are not deployed without substantial advance planning (network design, site acquisition, equipment acquisition), requiring 10 business days prior notice of new base stations should not hinder licensees in providing their service offerings to the public.").

Under the PRA, the Commission must, among other things, establish that any new reporting requirement (whether the reporting is to the agency or a third party) “is necessary for the proper performance of the functions of the agency,” “reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities”; and “is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond.”<sup>4</sup>

The importance of observing the PRA cannot be understated. On January 18, 2011, President Obama issued an Executive Order entitled “Improving Regulation and the Regulatory Review Process” directing federal agencies to review existing rules or consider whether new proposals create barriers that may unnecessarily burden businesses and the economy.<sup>5</sup> In pertinent part, the Executive Order, requires each agency to “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)” and “tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.”<sup>6</sup> Chairman Genachowski subsequently directed the Commission to “perform its responsibilities consistent with the principles in the executive order.”<sup>7</sup> The Chairman emphasized that:

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<sup>4</sup> 44 U.S.C. §§ 3506(c)(3).

<sup>5</sup> Executive Order 13563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3821 (Jan. 21, 2011).

<sup>6</sup> *Id.*

<sup>7</sup> Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, Broadband Acceleration Conference, Washington, D.C., at 4 (Feb. 9, 2011), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-304571A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304571A1.pdf).

One thing government at all levels can do is ensure efficient, effective regulation. *We need rules that serve legitimate public needs without erecting costly or unnecessary barriers. The National Broadband Plan identified red tape as a significant obstacle to broadband deployment. Overly burdensome rules and regulations can slow down deployment and raise costs. It also can limit businesses ability to invest in new technologies and hire new workers.*<sup>8</sup>

Newly-adopted Section 27.72(b) is precisely the sort of regulation that Chairman Genachowski warned against – if not modified, it will unnecessarily frustrate the deployment of broadband in America.

Under Section 27.72(b), a WCS licensee is required to provide Sirius XM with five days advance written notice before a WCS base station is modified in any manner – without regard to whether the modification poses a reasonable threat of interference to Sirius XM – with respect to:

- (i) The coordinates of the proposed base station to an accuracy of no less than  $\pm 1$  second latitude and longitude;
- (ii) The proposed operating power(s), frequency band(s), and emission(s);
- (iii) The antenna center height above ground and ground elevation above mean sea level, both to an accuracy of no less than  $\pm 1$  meter;
- (iv) The antenna gain pattern(s) in the azimuth and elevation planes that include the peak of the main beam; and
- (v) The antenna downtilt angle(s).

The problem with requiring five days advance notice to Sirius XM, particularly where so many WCS base station modifications will be benign,<sup>9</sup> was explained in detail by the WCS Coalition prior to adoption of the *Report and Order*:

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<sup>8</sup> *Id.* at 1-2 (emphasis added).

<sup>9</sup> For example, as new base stations are added, the operator of a cellular network will frequently reduce the power of existing base stations to avoid self-interference. Such a reduction in power cannot possibly have an adverse impact on Sirius XM, and the *Report and Order* is silent as to what benefit is realized by making a WCS licensee give five days advance written notice of a proposed power reduction.

Focusing on mobile broadband offerings, it is important for the Commission to keep in mind that the process of deploying a network capable of providing ubiquitous mobile service is an iterative one. Licensees are not only adding new base stations, but they are constantly “tweaking” their existing facilities as necessary to eliminate “dead zones” in coverage, avoid self-interference between the operator’s own cell sites and otherwise improve service to the public. Invariably, one iteration begets another – for instance, a slight modification of one antenna’s orientation to improve coverage may require a corresponding modification of a second antenna to avoid self-interference, which in turn might require a reorienting of a third antenna to fill-in coverage, and so on. Often, the need for these network modifications cannot be predicted beforehand, as propagation modeling tools are imperfect (particularly in urban areas with substantial man-made clutter). Thus, they must be effectuated in real time – adjustments are made, signal levels measured, further adjustments made, etc., by field personnel until the system is in balance.

Under the rules proposed by the staff, what often must take place over the course of hours or a few days would be stretched out for months, as each individual modification would require delays. Take the example above – if the first antenna reorientation results in unexpected self-interference, the network operator will be precluded from fixing the problem until it provides an additional five business days notice. In the interim, it must either return the first base station to its prior condition (restoring the dead zone where it was not serving the public), or suffer the self-interference (and in the process degrade its service to the public). And, what public interest objective is advanced by this result? Sirius XM will have been on notice of the location of every WCS base station being modified and should have no difficulty identifying WCS as a potential source in the unlikely event any new interference arises.<sup>10</sup>

To address this problem, the WCS Coalition proposed a simple solution: notice of any modification to a WCS base station (other than changes in location) would be given within 24 hours of the modifications being made.<sup>11</sup> As noted at that time, “[t]his approach will assure that all licensees have current data regarding the configuration of each others’ facilities, which will facilitate future cooperation and assure that as new facilities are designed the current configuration of existing ones will be considered. However, it allows modifications not related

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<sup>10</sup> WCS Coalition Technical PN Comments at 14-15 (citations omitted). *See also* Comments of the WCS Coalition, WT Docket No. 07-293, at 39-40 (filed Feb. 14, 2008).

<sup>11</sup> *See* WCS Coalition Technical PN Comments at 16.

to locations to be made within the timeframes dictated by marketplace realities.”<sup>12</sup> In a subsequent filing, Sirius XM conceptually agreed, recommending “that the Commission limit the 24 hour notification rule to only those changes that do not increase the desired signal level, and the potential for interference on the ground.”<sup>13</sup> Yet, the *Report and Order* does not acknowledge Sirius XM’s position, much less substantively address the WCS Coalition’s proposal. Indeed, the Commission has never explained why the proposed 24 hour post-modification rule was not adopted.<sup>14</sup>

In seeking reconsideration of the *Report and Order*, the WCS Coalition reiterated its concerns and proposed another alternative that was responsive to Sirius XM’s concern.

Specifically, the WCS Coalition stated:

On reconsideration, the Commission can and should adopt a middle ground approach that will provide WCS broadband service providers, and their customers, relief from the overly protective approach that Sirius XM proposes, while providing Sirius XM with greater protection than the WCS Coalition had initially provided.

The Sirius XM proposal is flawed because it presumes that WCS operations only provide marginal protection to Sirius XM, and thus any increase in base station signal level at the ground will result in interference to Sirius XM. This is simply not true – given the height at which most base stations will be located and the need to spread the signal relatively equally within the service area, there are unlikely to be “hot spots” where a minor increase in WCS signal level will prove devastating to Sirius XM. Thus, WCS licensees should be permitted to modify facilities, other than changes in location, without prior notice so long as the result of the change does not increase the predicted power flux density at ground level by more than 2 dB and notice of the change is given within 24 hours of the change. Along similar lines, Sirius XM should be permitted to modify its repeaters, other than changes in location, without prior notice so long as the result of the change is not predicted to increase the power flux density at any WCS base station antenna by more than 2 dB. By allowing a modest 2 dB predicted increase

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<sup>12</sup> *Id.*

<sup>13</sup> See Comments of Sirius XM Radio Inc., WT Docket No. 07-293, at 5-6 (filed May 13, 2010).

<sup>14</sup> See *Report and Order*, 25 FCC Rcd at 11771-73.

in signal strength, the Commission will materially reduce the burden of the advance notification requirement, without significantly increasing the risk of interference. And, of course, this proposal is procedural only – adoption of the WCS Coalition’s proposal will not change the parties’ substantive rights and obligations to each other where interference does occur.<sup>15</sup>

That proposal, an alternative that achieves the Commission’s objective of protecting Sirius XM from interference but does so in a manner less burdensome to WCS licensees, remains pending before the Commission. It should be adopted, and until it is adopted, the PRA bars the Commission from allowing Section 27.72(b) to go into effect.

Respectfully submitted,

THE WCS COALITION

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<sup>15</sup> WCS Coalition Petition for Reconsideration at 20-21.