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The Honorable Michael K. Powell
Chairman
Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Written Ex Parte Presentation; ET Docket No. 98-153

Dear Chairman Powell:

The U.S. GPS Industry Council is writing to lend its full support to the January 28, 2002 letter from Sirius Satellite Radio Inc. to you expressing Sirius' concern regarding a troubling development in the Ultra-wideband ("UWB") rulemaking proceeding. In the letter, Sirius explained that Commission staff apparently has taken the untenable position that Section 7 of the Communications Act of 1934, as amended, shifts the burden of demonstrating the non-interfering operation of unlicensed UWB devices from UWB proponents to incumbent operators. The Council objects in the strongest possible terms to this misguided – and unprecedented – interpretation of Section 7.

Like Sirius, the Council believes that UWB proponents clearly bear the burden of showing that their devices will not cause harmful interference to existing services. The Commission proposes to authorize UWB devices under Part 15 of its rules, which unambiguously obligates proponents of new devices to establish that they will not cause harmful interference. *See, e.g.,* 47 C.F.R. §§ 15.29 and 15.37. The reliance on Section 7 advanced by Commission staff, however, would shift that burden to Council members and other incumbent operators. Such reliance is clearly misplaced because, as Sirius correctly observed, Section 7 is only a "broad statement of policy" intended to encourage provision of new technologies and services – not a means of overriding established procedures. To the best of Council's knowledge, Section 7 has only been used by the Commission in the past to help guide policy. Commission staff should not now read the language of the statute as requiring anything more.¹

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¹ In the UWB NPRM, the Commission concluded that, because Section 7 requires the Commission to encourage the provision of new technologies and services to the public, "[it] should develop reasonable regulations that will foster the development of UWB technology while continuing to protect radio services against interference." *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, Notice of Proposed Rulemaking, ET Docket No. 98-153, FCC 00-163, at ¶ 8 (released May 11, 2000). Significantly, the Commission at that time clearly treated Section 7 as "a general, initial step" only, as Sirius correctly observed.

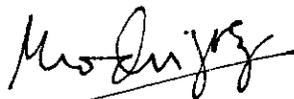
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The Commission satisfied its narrow Section 7 obligation when it determined, as a matter of policy, that UWB devices may serve the public interest. Having met that obligation, it is now incumbent upon the Commission to determine whether and how to implement UWB services while ensuring that incumbent operations are protected from interference. Under Part 15, the burden of demonstrating the lack of harmful interference clearly rests, as noted above, on the shoulders of UWB proponents.

The Commission staff's novel interpretation of Section 7 not only undermines Part 15, it would also impose an impossible burden on authorized operators. The Council agrees with Sirius that the staff's reading of Section 7, if not checked, would permit any Part 15 device to operate unless an incumbent operator could demonstrate that the specific device at issue would cause harmful interference to its service. This scenario would place incumbent operators in an unworkable position, given the wide range of existing *and potential* UWB devices and operating characteristics. Moreover, in the absence of the technical parameters (even in proposed form) within which UWB devices would be required to operate, proving the existence of harmful interference is, at this time, simply not feasible. For these reasons, the only practical approach is to require, as Part 15 does, that UWB proponents demonstrate that their individual devices will not cause harmful interference, once the UWB operating conditions have been established.

In sum, the Council is not aware of any precedent in which the Commission shifted the burden of demonstrating compliance with Part 15 on account of the policy-setting directives of Section 7 – and no such precedent should be established here. Accordingly, the Council urges the Commission to heed the concerns of Sirius, and require that UWB proponents alone bear the burden of demonstrating that their devices can co-exist with incumbent operations.

Respectfully yours,



Raul R. Rodriguez
Counsel to U.S. GPS Industry Council

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Mr. Julius P. Knapp
Mr. John A. Reed
Ms. Karen Rackley
Mr. Mike Marcus