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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ET Docket 98-153, In the Matter of Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems

Dear Chairman Powell:

Sirius Satellite Radio Inc. ("Sirius") respectfully submits this letter in further support of its letter of January 28, 2001. Following that letter and subsequent discussion with senior staff, we thought that the following supplemental information might be helpful in your consideration of this matter.

The Commission's rules and practice unequivocally show that the burden of demonstrating that a proposed Part 15 device complies with applicable technical standards rests squarely with the proponent of the device.[1] Proponents of Part 15 devices must first receive equipment authorizations under one of the three authorization procedures outlined in Part 2 of

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1 *In The Matter Of 1998 Biennial Regulatory Review-Amendment Of Parts 2, 25, And 68 Of The Commission's Rules To Further Streamline The Equipment Authorization Process For Radio Frequency Equipment, Modify The Equipment Authorization Process For Telephone Terminal Equipment, Implement Mutual Recognition Agreements And Begin Implementation Of The Global Mobile Personal Communications By Satellite* (GMPCSA, GEN Docket No. 98-68, 13 FCC Rcd. 10683, at ¶¶ 3-10(released May 18, 1998) (discussing the "burden of our equipment certification and registrations programs on manufacturers," noting past simplifications of the rules enabling understanding and compliance by manufacturers, and proposing to reduce burden on manufacturers in certain instances by allowing certification by Telecommunication Certification Bodies.); *In The Matter Of Revision Of Part 15 Of The Rules To Harmonize The Standards For Digital Devices With International Standards*, 73 Rad. Reg. 2d 1167, at ¶¶1, 2 (adopted September 17, 1993) (stating that "[t]he equipment authorization procedures of Part 2 require that the manufacturer or importer of a device demonstrate that the device complies with the applicable technical standards"

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the Commission's rules.[2] In general, testing is the responsibility of the device proponent.[3] Under Verification, equipment manufacturers "make measurements or takes the necessary steps to ensure that the equipment complies with the appropriate technical standards."[4] Under the Declaration of Conformity procedure, the "responsible party" (manufacturer, importer, distributor, or person who modifies the equipment) carries this obligation.[5] Under the Certification procedure, the applicant must submit representations of conformity and supporting test data to the commission.[6] If, based on the application for authorization and other data the commission finds that the device will not comply with the applicable standards, it will dismiss the application and the device may not be marketed.[7]

Proponents of new devices are also responsible for compliance with additional Part 15 rules. Under Part 15, this responsibility requires proponents to design their devices to comply with applicable limits;[8] to design their devices taking into account proximity of licensed devices which may be susceptible to interference, and avoid such interference[9]; to provide equipment, data, or other information to the Commission to enable to Commission to verify compliance and non-interference, or to arrange and pay for additional testing.[10]

Proponents of Part 15 devices do not only have the burden of showing compliance with applicable Part 15 standards; they must also ensure that their devices do not interfere with authorized systems. Operation of Part 15 devices is expressly conditioned on their not causing

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2 See 47 C.F.R. §§2.901-2.907.

3 See *In The Matter Of 1998 Biennial Regulatory Review-Conducted Emissions Limits Below 30 MHz For Equipment Regulated Under Parts 15 And 18 Of The Commission's Rules*, ET Docket No. 98-90, FCC 99-296 at ¶ 26 (adopted October 13, 1999) (noting that proposed radiated emission testing may constitute "*increased* testing burden on responsible parties" to demonstrate compliance with applicable limits.) (emphasis added).

4 47 C.F.R. §2.902

5 47 C.F.R. §§ 2.906, 2.909; *In The Matter Of Amendment Of Parts 2 And 15 Of The Commission's Rules To Deregulate The Equipment Authorization Requirements For Digital Devices*, ET Docket No. 95-19, 11 FCC Rcd. 17915, at ¶1 (released May 14, 1996) (stating that under the new Declaration of Conformity procedure "a manufacturer or equipment supplier will test a product to ensure compliance with our standards...")

6 47 C.F.R. §2.907.

7 See 47 C.F.R. §§2.915, 2.919.

8 See 47 C.F.R. §15.15.

9 See 47 C.F.R. § 15.17.

10 See 47 C.F.R. § 15.29.

harmful interference to authorized systems, and Part 15 devices must cease operation immediately if they cause such interference even if they comply with the applicable standards.[11]

Part 15 and the Commission's practice make clear that the burden of demonstrating compliance with applicable rules is intended to ensure that the proposed devices will operate as required under the applicable rule or operating conditions.[12] For a Part 15 device, this means that proponents must demonstrate that their devices will operate in conformity with applicable technical specifications *and* will not cause harmful interference.

All the tests submitted in the current proceeding show that UWB devices cause harmful interference to authorized services at the levels at which they operate.[13] UWB proponents have manifestly not met their burden of showing that their devices will not cause harmful interference. In addition, UWB proponents cannot currently meet their obligation of showing that their devices will comply with applicable standards (and not cause interference), because there are no applicable, or even proposed, standards in place. Until the Commission issues proposed rules in the form of a further NPRM, at least for communications devices, UWB proponents cannot possibly show that their devices will be able to operate as Part 15 devices.

We hope that this additional information is helpful.

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11 See 47 C.F.R. §§15.5.

12 See *In The Matter Of Amendment To The Commission's Rules To Establish New Personal Communications Services*, GEN Docket No. 90-134, 8 FCC Rcd. 7906, at ¶186 (released October 22, 1993) (stating that compliance with spectrum etiquette by responsible parties will be ensured by requiring certification under Part 2 procedures, and requiring measurements to demonstrate compliance with technical standards.)

13 Many existing UWB devices have not yet been tested, and proposed UWB devices do not yet exist to be tested, making it even more imperative that the Commission issue proposed rules to address such devices.

Sincerely yours,

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