Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Application of Liberty Media Corporation For Consent to Transfer of *De Facto* Control of Sirius XM Radio Inc.	IBFS File Nos. SES-STA-20120320-00280 SES-STA-20120320-00281 SES-STA-20120320-00282 SAT-STA-20120320-00053 SAT-STA-20120320-00054 SAT-STA-20120320-00055 SAT-STA-20120320-00056 ULS File Nos. 0005137812 and 0005137854 Experimental License File Nos. 0007-EX-TC-2012, 0008-EX-TC-2012, 0009-EX-TC-2012

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Wireless Telecommunications Bureau

PETITION FOR RECONSIDERATION OF DISMISSAL OF
APPLICATIONS FOR CONSENT TO TRANSFER OF *DE FACTO* CONTROL

Robert L. Hoegle
Timothy J. Fitzgibbon
Thomas F. Bardo
Nelson Mullins Riley & Scarborough LLP
101 Constitution Avenue, NW, Suite 900
Washington, D.C. 20001
(202) 712-2800

Counsel for Liberty Media Corporation

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Summary

Liberty Media petitions for reconsideration of the Bureaus' actions dismissing its applications for consent to the transfer of *de facto* control of Sirius to Liberty Media. The Bureau Decision dismissed the applications as "unacceptable for filing because they are defective with respect to 'execution' and 'other matters of a formal character.'" The defects resulted from Sirius' refusal to provide the "passwords, signatures and other information...necessary to properly file an electronic transfer of control application." The Bureau Decision denied Liberty Media's request for a waiver of such filing requirements, concluding that "the facts disclosed in the referenced applications are not sufficient to establish that Liberty Media intends to take actions" that would "constitute exercise of *de facto* or *de jure* control over Sirius."

The Commission precedent is clear that Commission approval is a prerequisite to asserting control over a Commission licensee. The Bureau Decision effectively permits Sirius to block an application for such approval by refusing to provide the necessary information and cooperation. Liberty Media respectfully submits that the Bureau Decision improperly delegates to Sirius the authority to determine whether Liberty Media's exercise of its ownership rights gives rise to a transfer of *de facto* control of Sirius and denies administrative due process to Liberty Media.

Liberty Media sufficiently expressed its intent to assert control over Sirius in its applications to the Commission. However, its subsequent actions confirm its ability and intent to assert control over Sirius. On May 8 and 9, 2012, Liberty Media purchased 60,350,000 additional shares of Sirius common stock for approximately $120 million. It also has entered into a forward purchase contract for 302,198,700 additional shares of Sirius common stock for

approximately $649 million. With its Preferred Shares, Liberty Media will own common shares representing approximately 46.17% of the total outstanding common shares of Sirius on an as-converted basis. In this Petition for Reconsideration, Liberty Media describes the means by which it currently intends to assert *de facto* and/or *de jure* control over Sirius upon receiving Commission approval. Further, Liberty Media submits a declaration pursuant to Section 1.16 of the Commission's Rules stating that Liberty Media has determined that it should assert control of Sirius and will take action to do so.

Because Liberty Media has the ability and intent to assert control over Sirius, the Bureaus should reconsider their dismissal of Liberty Media's applications for consent to the transfer of *de facto* control of Sirius, grant Liberty Media's waiver requests, and accept the applications for filing.

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To: International Bureau
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PETITION FOR RECONSIDERATION OF DISMISSAL OF
APPLICATIONS FOR CONSENT TO TRANSFER OF *DE FACTO* CONTROL

Liberty Media Corporation ("Liberty Media"), pursuant 47 U.S.C. §405(a) and 47 C.F.R. §1.106, hereby petitions for reconsideration of the actions taken by the Deputy Chief of the International Bureau ("IB"), Chief Engineer of the Office of Engineering and Technology ("OET") and the Wireless Telecommunications Bureau ("WTB") (collectively the "Bureaus") dismissing the above-captioned applications for consent to transfer of *de facto* control of Sirius to Liberty Media in response to a Petition to Dismiss or Deny filed by Sirius XM Radio, Inc. ("Sirius"). *See* Letter dated May 4, 2012 to Robert L. Hoegle (DA 12-717) ("Bureau Decision"); WTB Notices of Dismissal, Reference Nos. 5370148 & 5370149, dated May 10, 2012 ("WTB Dismissal Notices"). Because Liberty Media has the ability and the intent to control Sirius, the Bureau Decision and WTB Dismissal Notices should be

reconsidered, Liberty Media's waiver requests should be granted, and the applications for consent to transfer of *de facto* control should be accepted for filing.

The Bureau Decision is founded upon the conclusion that Liberty Media has not established that it "intends to take actions, such as conversion of preferred to common stock and installation of a board majority, that would constitute exercise of *de facto* or *de jure* control over Sirius." *Bureau Decision* at 3. Similarly, the WTB Dismissal Notices state that Liberty Media's applications do "not sufficiently describe how and when the proposed transaction is expected to occur." *WTB Dismissal Notices* at 1. As set forth and clarified below, Liberty Media intends to assert control over Sirius, has the ability to do so, and is required to seek and obtain Commission approval prior to asserting such control.

Factual Background

Pursuant to an Investment Agreement dated February 17, 2009 between Liberty Radio, LLC, an indirect wholly-owned subsidiary of Liberty Media, and Sirius ("Investment Agreement"),[1] Liberty Media currently holds 12,500,000 Series B-1 Preferred Shares issued by Sirius. On an as-converted basis, the Preferred Shares represent approximately 40% of the total outstanding common shares of Sirius. Liberty Media also currently appoints and elects five of thirteen directors on the Sirius Board of Directors. *See* Declaration of Craig Troyer in Support of Petition for Reconsideration of Dismissal of Application for Consent to Transfer of *De Facto* Control, dated May 30, 2012 ("Troyer Dec. 2") at ¶2.

In concluding its informal inquiry regarding Liberty Media's initial investment in Sirius in 2009, the Commission staff had relied upon certain voting restrictions and other limitations

[1] The Investment Agreement is annexed as Exhibit 1 to the Declaration of Craig Troyer in Support of Opposition to Petition to Dismiss or Deny Application for Consent to Transfer of *De Facto* Control, dated April 12, 2012 ("Troyer Dec. 1"). For the Bureaus' convenience, Liberty Media resubmits a copy of Troyer Dec. 1 and its exhibits.

on Liberty Media's corporate conduct set forth in the Investment Agreement. *See* Application for Consent to Transfer of *De Facto* Control, filed Mar. 20, 2012 ("Narrative Application"), at 2-5. Those restrictions and limitations expired on March 6, 2012. Prior to their expiration, counsel for Liberty Media consulted with the Commission staff regarding the filing of an application for consent to transfer of *de facto* control, and the Commission staff agreed that such filing would be appropriate. Even Sirius has conceded that, as a result of the expiration of those restrictions and limitations, Liberty Media now is free to take "further actions that could ultimately result in a transfer of control" of Sirius. *See* Petition to Dismiss or Deny, filed Mar. 30, 2012 ("Sirius Petition"), at 20.

After Sirius refused to provide the passwords and other information required to utilize the Commission's electronic application systems, counsel for Liberty Media also consulted with the Commission staff regarding the appropriate method to file its applications. On March 20, 2012, Liberty Media filed applications seeking consent to the transfer of *de facto* control of Sirius from the current shareholders of Sirius to Liberty Media. Liberty Media also filed a waiver request to allow the submission of alternative application forms because of Sirius' refusal to cooperate in the filing of standard electronic transfer of control applications.

Although the Commission had not acted upon Liberty Media's waiver request or accepted its applications for filing, Sirius filed its Petition on March 30, 2012.[2] After precluding the use of the Commission's electronic application filing systems by refusing to

[2] The Communications Act and the Commission's Rules state that a petition to deny an application may be filed no later than 30 days *after* the date of the Public Notice accepting the application for filing, and that such petitions must contain specific allegations of fact, supported by affidavits of persons with personal knowledge of the alleged facts, sufficient to show that grant of the application would be *prima facie* inconsistent with the public interest. *See, e.g.*, 47 U.S.C. §309(d). Sirius cited no statute or regulation authorizing the filing of a petition to deny prior to acceptance of the applications for filing and provided no affidavit to support the factual allegations in the Petition.

provide Liberty Media with the required passwords and other information, Sirius argued in its Petition that "there are deficiencies in Liberty Media's applications and with their filing that warrant dismissal." *See Bureau Decision* at 2. Sirius did not contend that any transfer of control to Liberty Media would be *prima facie* inconsistent with the public interest, nor did Sirius dispute Liberty Media's ability to assert control over the company by taking any number of different actions. *See* Sirius Petition at 19-20; *Bureau Decision* at 2, n.5. Rather, Sirius argued that Liberty Media's applications for consent to the transfer of *de facto* control of Sirius should be dismissed because "Liberty Media has neither taken those actions nor indicated that it proposes to take those actions." *See Bureau Decision* at 2.

Bureau Decision and WTB Dismissal Notices

The Bureau Decision grants the Sirius Petition, denies Liberty Media's waiver requests, and dismisses the Liberty Media applications, finding that they are "unacceptable for filing because they are defective with respect to 'execution' and 'other matters of a formal character.'" *Bureau Decision* at 2.[3] The Bureau Decision makes clear that the "defects" to which it refers directly result from the fact that "Liberty Media was unable to obtain the passwords, signatures and other information from Sirius necessary to properly file an electronic transfer of control application." *Id.* The Bureau Decision further concludes that "a waiver of basic filing requirements is not warranted, as the facts disclosed in the referenced applications are not sufficient to establish that Liberty Media intends to take actions" that would "constitute exercise of *de facto* or *de jure* control over Sirius." *Id.* at 3. Finally, the Bureau Decision specifically rejects Liberty Media's claim that its applications were required

[3] The WTB dismissed the Liberty Media applications without prejudice, stating that the applications "were incomplete with respect to required answers to questions, informational showings, or other matters of formal character...." *WTB Dismissal Notices* at 1.

by the Commission's prior decisions in the *News Corp.* and *Liberty Media* transfer proceedings,[4] finding that those cases "do not involve, as here, unconverted rights with respect to voting for directors, and thus do not require a different result." *Id.* at 3, n.8.

<u>Liberty Media Intends to Control Sirius</u>

Liberty Media maintains that the applications as filed sufficiently demonstrate that Liberty Media intends to assert *de facto* control over Sirius. In fact, the applications expressly stated that they were being filed in order to comply with the requirements of Section 310(d) of the Communications Act by obtaining Commission consent prior to taking any action to assert control over Sirius. However, in order to eliminate any doubt as to its intentions with respect to asserting control over Sirius, Liberty Media is providing with this Petition for Reconsideration: (a) information regarding additional actions taken by Liberty Media to increase its ownership interest in Sirius since the Bureau Decision was issued; (b) a description of the means by which Liberty Media currently intends to assert *de facto* and/or *de jure* control over Sirius upon receiving Commission approval; and (c) a declaration pursuant to Section 1.16 of the Commission's Rules stating that Liberty Media has determined that it should assert control of Sirius and will take action to do so. *See* Troyer Dec. 2 at ¶6. Accordingly, Liberty Media requests reconsideration of the Bureau Decision[5] and the WTB Dismissal Notices[6], grant of its waiver requests, and acceptance of the applications for filing.

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[4] *General Motors Corp. and Hughes Electronics Corp., Transferors, and the News Corporation Limited, Transferee,* 19 FCC Rcd. 473 (2004) ("*News Corp. Order*") and *News Corp. and The DIRECTV Group, Inc., Transferors, and Liberty Media Corp., Transferee, for Authority to Transfer Control,* 23 FCC Rcd. 3265 (2008) ("*Liberty Media-DIRECTV Order*").

[5] The Bureau Decision stated that Liberty Media filed its IBFS applications for consent to transfer of *de facto* control of the satellite and earth station licenses held by Sirius "using the form for a request for special temporary authority, rather than for transfer of control, and did not request a waiver of Section 25.112(a)(1) of the Commission's Rules..." *Bureau Decision* at 1, n.3. Unlike the WTB and the OET, the IB would not permit the filing of paper applications, despite the fact that Sirius refused to provide the passwords and other information required "to properly file an electronic transfer of control application." Consequently, the IB informed counsel

Argument

Section 405(a) of the Communications Act and Section 1.106(b)(1) of the Commission's Rules permit any party or other person whose interests are adversely affected by an action taken by designated authority to file a petition requesting reconsideration of the action taken. The petitioner is required to "state with particularity" the respects in which the action taken by designated authority should be changed. 47 C.F.R. §1.106(d)(1). The petition also may include "facts or arguments which relate to events that have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission." 47 C.F.R. §1.106(c)(1). Finally, the designated authority may consider any new facts or arguments if it determines that such consideration "is required in the public interest." 47 C.F.R. §1.106(c)(2). As set forth below, Liberty Media intends to control Sirius and has the ability to do so. Consequently, the Bureau Decision and WTB Dismissal Notices should be reconsidered, Liberty Media's waiver requests should be granted, and its applications for consent to the transfer of *de facto* control of Sirius should be accepted for filing.

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for Liberty Media that the *only* means by which Liberty Media could present its qualifications as the proposed transferee was through the filing of an electronic application using the STA application form. Because that form was filed electronically, and included all of the relevant information regarding Liberty Media's qualifications as the proposed transferee, consistent with the requirement in Section 310(d) that the Commission consider a transfer of control application as if the proposed transferee were a new applicant for the license, Liberty Media did not request a waiver of Section 25.112(a)(1). Liberty Media did request a waiver of the corresponding rule regarding the paper OET applications, but the Bureau Decision denied that waiver request in any event. Liberty Media hereby supplements its waiver request to include a waiver of Section 25.112(a)(1). In addition, upon acceptance of the applications for filing, Liberty Media will submit amendments, including publicly-available transferor or licensee information requested in the application form.

[6] Similarly, the WTB Dismissal Notices state that Liberty Media's wireless license applications included requests for waiver of Sections 1.913 and 1.917 of the Commission's Rules (to allow the filing of paper applications without the signature of Sirius), but failed to include a request for waiver of Section 1.934(d)(1) of the Commission's Rules concerning the failure to provide certain information requested by the application form. *WTB Dismissal Notices* at 1. However, Liberty Media's wireless applications included the required transferee information to facilitate review of the transferee's qualifications pursuant to Section 310(d), and the licensee and transferor information already is available to the Commission in its files. Nevertheless, Liberty Media hereby supplements its waiver request to include a waiver of Section 1.934(d)(1). In addition, upon acceptance of the applications for filing, Liberty Media will submit amendments, including publicly-available transferor or licensee information requested in the application form.

I. The Bureau Decision Unlawfully Permits Sirius to Preclude the Filing of a "Proper" Application for Transfer of *De Facto* Control.

The Bureau Decision provides the following justification for the dismissal of the Liberty Media applications seeking Commission consent to the transfer of *de facto* control of Sirius:

> We find Liberty Media's applications to be unacceptable for filing because they are defective with respect to "execution" and "other matters of a formal character." [footnote omitted]. Specifically, Liberty Media was unable to obtain the passwords, signatures, and other necessary information from Sirius to properly file an electronic transfer of control application.

Bureau Decision at 2. The Bureau Decision notes that Sirius had refused to provide the passwords, signatures and other information because "a majority of Sirius XM's board of directors and its management dispute Liberty Media's assertion that the expiration of certain provisions of the Investment Agreement...results in a *de facto* transfer of control of Sirius." *Bureau Decision* at 2, citing Sirius Petition at 1-2. The WTB Dismissal Notices also clearly demonstrate that the purported deficiencies in the wireless transfer of control applications filed by Liberty Media relate to "questions, informational showings, and other matters of a formal character" concerning Sirius. *See* WTB Notices of Dismissal at 1-2.[7] In short, the Bureau Decision and the WTB Dismissal Notices effectively have delegated to Sirius the authority to determine whether Liberty Media's exercise of the ownership rights now available under the Investment Agreement and the Certificate of Designations gives rise to a transfer of *de facto* control of a Commission licensee.[8]

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[7] Moreover, even if Liberty Media had obtained and included information regarding the licensee and the transferor, it certainly could not have provided the requisite certification from the licensee and the transferor that the information was "true, complete [and] correct" given Sirius' refusal to provide the information or to sign the applications.

[8] The Commission's Rules expressly delegate authority to the respective Bureaus to act upon applications. *See* 47 C.F.R. §0.261(a)(4) (International Bureau delegated with authority to act on satellite and earth station

The Commission and the Courts have long advised applicants "that in doubtful and borderline cases, as to whether a proposed transaction would result in a transfer of control within the meaning of Section 310(b), doubt should be resolved by bringing the complete facts of the proposed transaction to the Commission's attention for a ruling in advance of any consummation of the transaction." *Lorain Journal Co. v. FCC,* 351 F.2d 824, 830 (D.C. Cir. 1965), cert. denied, 383 U.S. 967 (1966) (*citing Public Notice on Procedure of Transfer and Assignment of Licenses*, 4 R.R. 342 (1948)). Nevertheless, the Bureau Decision and WTB Dismissal Notices effectively remove from the government agency charged with regulating the spectrum and licenses at issue the determination of whether Liberty Media's exercise of the full panoply of rights that accompany its current ownership interest in Sirius would result in a transfer of *de facto* control, and leaves that determination exclusively in the hands of the licensee by allowing Sirius to withhold the information required to enable Liberty Media "to properly file an electronic transfer of control application." Moreover, had Liberty Media taken steps to force Sirius to provide the information needed in order "to properly file an electronic transfer of control application," Sirius likely would have argued that Liberty Media was attempting to exert control over the company without prior Commission approval in violation of Section 310(d).

The Bureau Decision and WTB Dismissal Letters also constitute a denial of administrative due process to Liberty Media. Liberty Media has the ability to assert control

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applications); 47 C.F.R. §0.131(a) (Wireless Telecommunications Bureau delegated with authority to act on wireless telecommunications licensing and application matters). Courts have recognized that a federal agency may not delegate decision-making authority to entities outside the agency. *See Nat'l Ass'n of Reg. Util. Comm'rs v. FCC,* 737 F.2d 1095, 1143 (D.C. Cir. 1984), *cert. denied,* 469 U.S. 1227 (1985) (District of Columbia Circuit "caution[ed] the Commission that it cannot, of course, cede to private parties...the right to decide contests between themselves and their opponents"); *U.S. Telecom Ass'n v. FCC,* 359 F.3d 554, 565 (D.C. Cir. 2004) ("case law strongly suggests that subdelegations" of decision-making authority to "outside parties are assumed to be improper absent an affirmative showing of congressional authorization").

over Sirius, based upon its ownership interest in Sirius and the expiration of the restrictions contained in the Investment Agreement, and intends to do so, but Liberty Media is required by Section 310(d) of the Communications Act to obtain prior approval of the Commission before asserting that control. However, Liberty Media has no means "to properly file an electronic transfer of control application" without the cooperation of Sirius. Notwithstanding Sirius' refusal to provide the information needed "to properly file an electronic transfer of control application," Liberty Media provided all of the "transferee" information required for the Commission to make the public interest determination required by Section 310(d) of the Communications Act in the alternative application forms that it filed.[9] The denial of Liberty Media's waiver requests to permit the filing of alternative application forms: (a) provides Liberty Media no opportunity to apply for the "prior approval" required by statute; and (b) effectively appoints Sirius as the sole arbiter of what constitutes a transfer of control under the statute.

II. Liberty Media Sufficiently Expressed Its Intent in Filing Its Applications.

The Bureau Decision denied Liberty Media's waiver requests, concluding that "a waiver of basic filing requirements is not warranted," because "the facts disclosed in the referenced applications are not sufficient to establish that Liberty Media intends to take actions" sufficient to "constitute exercise of *de facto* or *de jure* control over Sirius." *Bureau Decision* at 3. Consequently, the Bureau Decision granted the Sirius Petition and dismissed the

[9] Section 310(d) of the Communications Act requires that the Commission consider a transfer of control application as if the proposed transferee were applying for the licenses directly. *See, e.g., Application of Comcast Corp., General Electric Co. and NBC Universal, Inc., For Consent to Assign Licenses and Transfer of Control of Licenses*, 26 FCC Rcd. 4238 (2011), at ¶22 n.42. In fact, Liberty Media and its affiliates already hold various Commission licenses, and the Commission previously approved Liberty Media's qualifications to exercise *de facto* control of DIRECTV in 2008. *See Liberty Media-DIRECTV Order*. Moreover, the information withheld by Sirius from Liberty Media already is on file at the Commission and is irrelevant to the Commission's public interest determination in the context of a transfer of control application.

Liberty Media applications. The WTB Dismissal Notices also state that Liberty Media's applications did "not sufficiently describe how and when the proposed transaction is expected to occur." *WTB Dismissal Notices* at 1.[10]

In its Petition, Sirius did not dispute Liberty Media's ability to assert control over the company by taking any number of different actions. *See* Sirius Petition at 19-20; *Bureau Decision* at 2, n.5. Rather, Sirius argued that "Liberty Media has neither taken those actions nor indicated that it proposes to take those actions." *See Bureau Decision* at 2. However, the Communications Act specifically prohibits Liberty Media from taking action to assert control over Sirius without prior Commission approval. 47 U.S.C. §310(d). Consequently, Liberty Media's failure to take actions to assert control over Sirius cannot serve as the basis for dismissal of its applications seeking prior Commission approval to take such actions. Instead, the Bureau Decision dismissed the applications based on the conclusion that the applications do not include facts "sufficient to establish that Liberty Media intends to take actions" to control Sirius. *Bureau Decision* at 3.

Liberty Media previously had represented in an April 20, 2009 letter to the then-Acting Chief of the International Bureau that the "'Liberty Parties'...will not exercise *de facto* control of Sirius and have no intention of doing so." Narrative Application at 4-5. That letter further recited that "[i]n the event that the facts and circumstances change in the future, Liberty Media will file those applications with the FCC, if any, that are necessary and appropriate." In February 2012, undersigned counsel for Liberty Media met with the Commission staff and confirmed that filing applications for consent to transfer of *de facto* control of Sirius was appropriate in view of the impending expiration of the restrictions in the Investment

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[10] Although the WTB Dismissal Notices denied Liberty Media's waiver requests and dismissed Liberty Media's wireless license applications, they did not address the merits of the Sirius Petition.

Agreement. Counsel for Liberty Media also had engaged in numerous conversations with Commission staff to determine the proper means to file an application for consent to transfer of *de facto* control in the event that Sirius refused to provide the requisite passwords and other information to utilize the Commission's electronic application filing systems. Ultimately, Liberty Media was forced to file waiver requests and alternative application forms because Sirius refused to provide the passwords and other information necessary to utilize the Commission's standard electronic application filing systems. Liberty Media stated in the applications that their purpose was "to obtain Commission consent to the transfer of *de facto* control of Sirius from the current shareholders of Sirius to Liberty Media." Narrative Application at 2.

Considered in the context of the prior representations of Liberty Media's counsel in 2009, Liberty Media's applications seeking consent to the transfer of *de facto* control were appropriate because of the expiration of the restrictions in the Investment Agreement (as confirmed in discussions with the Commission staff), under Commission precedent in the *News Corp. Order* and the *Liberty Media-DIRECTV Order*. However, the Bureau Decision distinguished the *News Corp. Order* and *Liberty Media-DIRECTV Order* on the grounds that those cases "do not involve, as here, unconverted rights with respect to voting for directors, and thus do not require a different result." *Bureau Decision* at 3, n.8. Those decisions involved proposed transferees seeking Commission consent to acquire 34% and 40%, respectively, of the common stock of a public company whose common shares otherwise were widely held, but, consistent with the requirements of Section 310(d), the transferees had not yet acquired the stock. Here, Liberty Media's applications demonstrated that, by virtue of the 2009 Investment Agreement, Liberty Media already owns Preferred Shares that are convertible

at Liberty Media's option at any time,[11] into shares of common stock representing approximately 40% of the common shares outstanding (after giving effect to such conversion) in a publicly traded corporation whose shares otherwise are widely held. Consequently, Liberty Media appropriately sought prior Commission approval before converting shares or taking other actions to assert control over Sirius, consistent with the requirements of Section 310(d) and the *News Corp. Order* and *Liberty Media-DIRECTV Order*.

Sirius bore the burden in its Petition to provide facts, supported by affidavit of persons with personal knowledge, sufficient to show that grant of the application would be *prima facie* inconsistent with the public interest. *See* 47 U.S.C. §309(d)(1). Nevertheless, it did not even attempt to argue that grant of the Liberty Media applications would be inconsistent with the public interest, nor did it provide an affidavit to support any of the facts alleged in its Petition or its Reply to Liberty Media's opposition to its Petition. Finally, Sirius cited to no statute or regulation authorizing the filing of a petition to deny an application before the application had been accepted for filing by the Commission. In granting the Sirius Petition and dismissing Liberty Media's applications, the Bureau Decision ignored the substantive and procedural deficiencies in the Sirius Petition.

III. Liberty Media Has Increased Its Ownership Interest in Sirius and Intends to Assert *De Facto* and/or *De Jure* Control over Sirius.

Since the filing of its applications and its Opposition to the Sirius Petition, Liberty Media has significantly increased its ownership interest in Sirius. Liberty Media also is providing with this Petition for Reconsideration a declaration pursuant to Section 1.16 of the Commission's Rules stating that it has determined that it should seek to assert control over

[11] *See* Sections 7 and 8 of the Certificate of Designations applicable to the Series B-1 Preferred Shares held by Liberty Media. Troyer Dec. 1 at Ex. 2.

Sirius and intends to take action to do so. *See* Troyer Dec. 2. In deciding a petition for reconsideration, the designated authority that took the action that is subject to the petition may consider "facts or arguments which relate to events that have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission." 47 C.F.R. §1.106(c)(1); *see, e.g., Qwest Com. Corp. v. Farmers and Merchants Mut. Tel. Co.*, 25 FCC Rcd. 3422 (2010), at ¶12 ("[o]n reconsideration, the Commission is entitled to review new facts and to change its ruling based on the new facts"); *Application of Lebanon Broadcasting Co.*, 68 F.C.C.2d 822 (1978) (subsequent event warranted reconsideration of license application dismissal). The designated authority also may consider any new facts or arguments if it determines that such consideration "is required in the public interest." 47 C.F.R. §1.106(c)(2).[12]

A. *Additional Purchase of Sirius Shares*

Since the issuance of the Bureau Decision, Liberty Media: (a) purchased 60,350,000 additional shares of Sirius common stock in open market purchases on May 8 and 9, 2012 at an aggregate cost of approximately $120 million; and (b) has entered into a forward purchase contract for 302,198,700 additional common shares of Sirius at an aggregate cost of approximately $649 million, the settlement date of which is July 11, 2012. As a result, upon settlement of the forward purchase Liberty Media will own common shares that, together with the Preferred Shares, represent approximately 46.17% of the total outstanding common shares of Sirius on an as-converted basis. *See* Troyer Dec. 2 at ¶¶3-5.

[12] In addition, Section 1.65 of the Commission's Rules requires an applicant to update information in its application "whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application." 47 C.F.R. §1.65(a). The rule states that an application is considered "pending" from the time that it is accepted for filing until the time that "grant or denial of the application is no longer subject to reconsideration by the Commission or review by any court." Upon grant of its Petition for Reconsideration and acceptance of its applications for filing, Liberty Media will submit an amendment to its applications pursuant to Section 1.65 to include this updated information.

B. Intent to Assert De Facto and/or De Jure Control

1. *De Facto* Control

Liberty Media has the intent and, based upon its current ownership of Sirius shares, the ability to assert *de facto* control over Sirius. Although there are a number of different ways that Liberty Media may assert *de facto* control over Sirius upon grant of its applications, Liberty Media currently intends to convert approximately one-half (49.9%) of its Preferred Shares, which together with the additional common shares of Sirius that it has purchased and may continue to purchase will constitute more than 32% of the total outstanding common shares of Sirius, making Liberty Media by far the single largest common shareholder of Sirius. Following the conversion of such Preferred Shares, Liberty Media intends to take action as soon as practicable to cause the nomination and election of persons to Sirius' Board of Directors such that a majority of the persons serving on the Sirius Board of Directors will be persons nominated by Liberty Media. Liberty Media intends to vote all of its shares of common stock in favor of its nominees and to solicit proxies from other Sirius shareholders in support of the election of those nominees. Troyer Dec. 2 at ¶¶6-8.

Together with the additional common shares that it has acquired in open market purchases and will acquire under the forward contract, conversion of 49.9% of the Preferred Shares would provide Liberty Media with approximately 1,653,450,104 common shares, which is: (a) nearly 200,000,000 more than the *total* number of common shares voted in the director elections at the Sirius 2012 annual shareholder meeting (*see* Troyer Dec. 2 at Ex. 1); (b) approximately 300,000,000 more than the *total* number of shares voted in director elections at the 2011 annual meeting; and (c) and nearly twice the *total* number of shares voted in director elections at the 2010 annual shareholder meeting. *See* Troyer Dec. 1 at Ex. 7. In

fact, the two Sirius directors receiving the largest number of votes in 2012, Eddy W. Hartenstein and Mel Karmazin, received a total of 1,417,014,485 and 1,407,785,376 votes, respectively – more than 200,000,000 *fewer* votes than Liberty Media would cast in any director election if it converted only 49.9% of its Preferred Shares. *See* Troyer Dec. 2, Ex. 1.

The voting history in each of the past three annual shareholder meetings for the election of directors readily demonstrates that Liberty Media's conversion of 49.9% of its Preferred Shares should be sufficient to enable it to control the election of directors, even before considering the effect of soliciting proxies from other shareholders in support of Liberty Media's nominees:

	Common Stock Outstanding on Record Date	**Total Shares Actually Voted**	**Percentage of Outstanding Shares Actually Voted**
2010	3,885,488,043	884,369,496	23%
2011	3,943,147,483	1,310,670,597	33%
2012	3,788,436,591	1,467,598,666	38%[13]

See Opposition to Petition to Dismiss or Deny Application for Consent to Transfer of *De Facto* Control, filed Apr. 12, 2012 (for 2010 and 2011); Troyer Dec. 2, Ex. 1. In short, Liberty Media has the ability to exert *de facto* control over Sirius and it intends to exert that control, upon Commission grant of its applications, by taking action to obtain control of the Board of Directors of Sirius.

[13] This is based upon 3,788,436,591 total outstanding shares of Sirius Common Stock. *See* Schedule 14A Proxy Statement of Sirius (http://www.sec.gov/Archives/edgar/data/908937/000119312512159007/d323930ddef14a.htm) filed April 11, 2012. If 49.9% of Liberty Media's Series B-1 Preferred Shares were converted, the total shares outstanding would have been 5,079,337,995, such that the 38% figure would be reduced to 28.9%.

2. *De Jure* Control

In addition, Liberty Media intends to continue purchasing Sirius common shares in the open market, depending upon the market price and other conditions.[14] Troyer Dec. 2 at ¶9. The common shares already owned by Liberty Media, together with the shares to be acquired upon settlement of the forward purchase and the shares that it would receive if it converted all of its Preferred Shares currently represent approximately 46.17% of the total outstanding common shares of Sirius. Liberty Media may purchase sufficient additional common shares of Sirius to enable it assert *de jure* control over Sirius. Because the Certificate of Incorporation of Sirius does not prohibit stockholders from acting by written consent, Liberty Media could, upon acquisition of sufficient shares, convert all of its Preferred Shares and act by written consent to replace the entire Board of Directors immediately and thereby assume control of Sirius. *See* Troyer Dec. 1, Ex. 5. If Liberty Media does acquire sufficient additional common stock of Sirius, and the Commission has not yet granted Liberty Media's applications for transfer of *de facto* control of Sirius, Liberty Media will amend the applications to seek consent to transfer of *de jure* control before converting all of its Preferred Shares.

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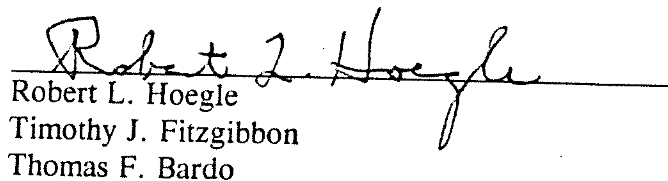
[14] Liberty Media had stated in its applications that it would abide by the Standstill Restrictions and the Voting Restrictions described the applications and would refrain from acquiring shares of the Common Stock of Sirius that would result in Liberty Media's Beneficial Ownership (as defined in Section 5.9(g) of the Investment Agreement) exceeding 49.9% until the Commission has acted upon Liberty Media's application for consent to the transfer of control of Sirius, the application is withdrawn, or circumstances change and Liberty Media advises the Commission of the changed circumstances. *See* Narrative Application at 9. However, the Bureau Decision expressly distinguished the *News Corp. Order* and *Liberty Media-DIRECTV Order* on the grounds that those cases "do not involve, as here, unconverted rights with respect to voting for directors, and thus do not require a different result." *Bureau Decision* at 3, n.8. Therefore, Liberty Media understands that it is free to acquire additional common shares of Sirius, even if such acquisition causes its Beneficial Ownership to exceed 49.9%, provided that it obtains Commission consent before converting sufficient Preferred Shares to provide it with *de jure* control over Sirius. In fact, Sirius has conceded that Liberty Media is free to "purchas[e] additional shares" of Sirius. Sirius Petition at 2. Consequently, Liberty Media withdraws the undertakings to so limit its purchases of Sirius shares and to abide by the Standstill Restrictions and the Voting Restrictions.

Conclusion

Because Liberty Media has the ability and intent to assert control over Sirius, the Bureaus should reconsider their dismissal of Liberty Media's applications for consent to the transfer of *de facto* control of Sirius, grant Liberty Media's waiver requests, and accept the applications for filing. Any other outcome potentially would subject Liberty Media to statutory requirements for which the Commission provides no procedural means to comply.

Respectfully submitted,

LIBERTY MEDIA CORPORATION

BY: 

Robert L. Hoegle
Timothy J. Fitzgibbon
Thomas F. Bardo

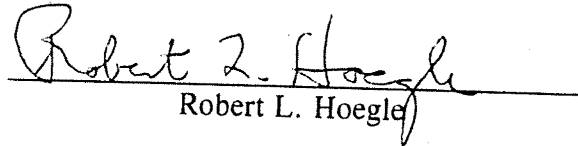
Nelson Mullins Riley & Scarborough LLP
101 Constitution Avenue, N.W., Suite 900
Washington, D.C. 20001
(202) 712-2816

May 30, 2012

CERTIFICATE OF SERVICE

I, Robert L. Hoegle, do hereby certify that copies of the foregoing Petition for Reconsideration of Dismissal of Applications for Consent to Transfer of *De Facto* Control and Declaration of Craig Troyer in Support of Petition for Reconsideration of Dismissal of Applications for Consent to Transfer of *De Facto* Control were served by first class U.S. mail, postage prepaid, this 30th day of May, 2012 on the following:

Richard E. Wiley
Jennifer Hinden
Joshua S. Turner
Wiley Rein LLP
1776 K Street, NW
Washington, D.C. 20006



Robert L. Hoegle

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Application of Liberty Media Corporation For Consent to Transfer of *De Facto* Control of Sirius XM Radio Inc.	)	IBFS File Nos. SES-STA-20120320-00280 SES-STA-20120320-00281 SES-STA-20120320-00282 SAT-STA-20120320-00053 SAT-STA-20120320-00054 SAT-STA-20120320-00055 SAT-STA-20120320-00056 ULS File Nos. 0005137812 and 0005137854 Experimental License File Nos. (TBD)

DECLARATION OF CRAIG TROYER IN SUPPORT OF OPPOSITION TO PETITION TO DISMISS OR DENY APPLICATION FOR CONSENT TO TRANSFER OF *DE FACTO* CONTROL

Craig Troyer hereby declares under penalty of perjury that:

1. I am the Deputy General Counsel of Liberty Media Corporation ("Liberty Media") and I am submitting this Declaration Under Penalty of Perjury to the Federal Communications Commission in support of Liberty Media's Opposition to the Petition filed by Sirius XM Radio, Inc. ("Sirius") seeking to Dismiss or Deny the Applications filed by Liberty Media for Commission consent to the transfer of *de facto* control of Sirius to Liberty Media.

2. On February 17, 2009, Liberty Radio, LLC ("Liberty Radio"), an indirect wholly-owned subsidiary of Liberty Media, entered into an Investment Agreement with Sirius pursuant to which Sirius issued to Liberty Radio: (a) 1,000,000 shares of convertible Series B-1 Preferred Stock; and (b) 11,500,000 shares of convertible Series B-2 Preferred Stock. A

copy of the Investment Agreement, which was submitted to the Securities and Exchange Commission ("SEC") on March 10, 2009 as Exhibit 4.55 to the Sirius Form 10-K for the year ended December 31, 2008, is attached hereto as Exhibit 1.

3. Attached hereto as Exhibits 2 and 3, respectively, are Certificates of Designations regarding the Series B-1 and B-2 Preferred Stock issued to Liberty Media. The Certificates of Designations were filed with the SEC as Exhibits 3.1 and 3.2 to the Sirius Form 8-K filed on March 6, 2009, which was the Closing Date upon which Liberty Radio acquired the preferred stock of Sirius.

4. The Series B-2 Preferred Shares subsequently were converted to Series B-1 Preferred Shares, such that Liberty Media currently holds 12,500,000 Series B-1 Preferred Shares. The Investment Agreement recites in Section 3.2(c) that the Series B Preferred Shares represent, on an as-converted basis, approximately 40% of the total outstanding common shares of Sirius.

5. Shortly after the Liberty Media/Sirius transaction was announced in 2009, the Commission staff informally questioned whether the transaction constituted a transfer of *de facto* control of Sirius. After Liberty Media's counsel and counsel for Sirius reviewed with the Commission staff the terms and conditions of the Investment Agreement and Certificates of Designations, the staff requested that Liberty Media confirm that it would not exercise *de facto* control of Sirius. In response to the staff's request, Liberty Media, through counsel, provided a letter to the Commission, dated April 20, 2009, a copy of which is attached as Exhibit 4.

6. The provisions of Section 4.1(c) and Section 4.9 of the Investment Agreement restricting Liberty Media's corporate conduct and voting rights expired on March 6, 2012 (the third anniversary of Closing Date of transaction).

7. Attached hereto as Exhibits 5 and 6, respectively, are copies of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws of Sirius.

8. Attached hereto as Exhibit 7 are copies of SEC Forms 8-K filed by Sirius on June 1, 2010 and May 27, 2011 recording the number of shares voted on various matters at the two most recent Sirius stockholder meetings.

9. I certify under penalty of perjury that the foregoing is true and correct

Craig Troyer

April 12, 2012

Execution Version

INVESTMENT AGREEMENT

dated as of February 17, 2009

between

Sirius XM Radio Inc.

and

Liberty Radio, LLC

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Exhibit A:	Form of Series B-1 Preferred Stock Certificate of Designations
Exhibit B:	Form of Series B-2 Preferred Stock Certificate of Designations
Exhibit C:	Form of DGCL Section 203 Resolution

INVESTMENT AGREEMENT, dated as of February 17, 2009 (this "Agreement"), between Sirius XM Radio Inc., a Delaware corporation (the "Company"), and Liberty Radio, LLC, a Delaware limited liability company ("Purchaser"), a wholly owned subsidiary of Liberty Media Corporation.

RECITALS:

Simultaneously with the execution of this Agreement, (i) the Company and Liberty Media Corporation have entered into the $280,000,000 Senior Secured Term Loan Credit Agreement (the "Phase I Credit Agreement") and (ii) XM Satellite Radio Inc. ("XM Opco") and Liberty Media Corporation have entered into the $150,000,000 Senior Secured Term Loan Credit Agreement (the "Phase II Credit Agreement", and, together with the Phase I Credit Agreement, the "Credit Agreements").

The Company intends to sell to Purchaser, and Purchaser intends to purchase from the Company, as an investment in the Company (i) shares of a series of convertible preferred stock, par value $0.001 per share, of the Company (the "Series B-1 Preferred Stock") having the terms set forth in a certificate of designations for the Series B-1 Preferred Stock in the form attached as Exhibit A (the "Series B-1 Preferred Stock Certificate of Designations") made a part of the Company's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") by the filing of the Series B-1 Preferred Stock Certificate of Designations with the Secretary of State of the State of Delaware (the "Delaware Secretary") and (ii) shares of a series of convertible preferred stock, par value $0.001 per share, of the Company (the "Series B-2 Preferred Stock"; and, together with the Series B-1 Preferred Stock, the "Preferred Stock") having the terms set forth in a certificate of designations for the Series B-2 Preferred Stock in the form attached as Exhibit B (the "Series B-2 Preferred Stock Certificate of Designations"; and, together with the Series B-1 Preferred Stock Certificate of Designations, the "Preferred Stock Certificates of Designations") made a part of the Certificate of Incorporation by the filing of the Series B-2 Preferred Stock Certificate of Designations with the Delaware Secretary.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

ARTICLE I

PURCHASE; CLOSING

1.1 Purchase. On the terms and subject to the conditions set forth herein, simultaneously with the earlier of (i) the initial funding under the Phase II Credit Agreement, and (ii) (A) the effectiveness of the XM Facility Amendments (as defined in Section 5.09(v), below) and (B) the delivery by Liberty Media Corporation of a certification that each of the conditions to the initial funding under the Phase II Credit Agreement have been satisfied or waived and that the lender under such agreement is ready, willing and able to fund (the "Closing"), Purchaser will purchase from the Company, and the Company will sell to Purchaser, 12,500,000 shares of Preferred Stock (to be allocated between Series B-1 Preferred Stock and Series B-2 Preferred Stock in accordance with Section 1.2(a)) for an aggregate purchase price of $12,500 (the

"Purchase Price") and as additional consideration for making the loans to the Company to be made under the Phase II Credit Agreement.

1.2 Closing.

(a) Subject to the satisfaction or waiver of the conditions set forth in Section 1.3, the Closing shall occur simultaneously with the earlier to occur of (i) the initial funding under the Phase II Credit Agreement or (ii) (A) the effectiveness of the XM Facility Amendments and (B) the delivery by Liberty Media Corporation of a certification that each of the conditions to the initial funding under the Phase II Credit Agreement have been satisfied or waived and that the lender under such agreement is ready, willing and able to fund, at the offices of Simpson Thacher & Bartlett LLP located at 425 Lexington Avenue, New York, New York 10017 or such other date or location as agreed by the parties (the "Closing Date"). As soon as practicable and not later than two business days prior to the Closing Date, Purchaser shall provide the Company with written notice (the "Preferred Stock Notice") of the number of shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock to be issued at the Closing, which number shall, in any event, equal 12,500,000 in the aggregate. In the event, that prior to the Closing, Purchaser has not delivered evidence reasonably satisfactory to the Company of Purchaser's ability to purchase the number of shares of Series B-1 Preferred Stock set forth in the Preferred Stock Notice without requiring a filing under the HSR Act, the Company shall issue Purchaser at the Closing, in lieu of shares of Series B-1 Preferred Stock, a corresponding number of Series B-2 Preferred Stock. Upon the expiration or early termination of the waiting period under the HSR Act, shares of Series B-2 Preferred Stock will become convertible into shares of Series B-1 Preferred Stock as provided in the Series B-2 Certification of Designations.

(b) Subject to the satisfaction or waiver on the Closing Date of the conditions to the Closing in Section 1.3, at the Closing,

(1) the Company will deliver to Purchaser certificates representing a number of shares of (i) Series B-1 Preferred Stock equal to the number of shares of Series B-1 Preferred Stock set forth in the Preferred Stock Notice and (ii) Series B-2 Preferred Stock equal to the number of shares of Series B-2 Preferred Stock set forth in the Preferred Stock Notice; and

(2) Purchaser will deliver the Purchase Price by wire transfer of immediately available funds to a bank account designated by the Company.

1.3 Closing Conditions.

(a) The obligation of Purchaser, on the one hand, and the Company, on the other hand, to effect the Closing is subject to the satisfaction or waiver by Purchaser and the Company at or prior to the Closing of the following conditions:

(1) no provision of any applicable law or regulation and no judgment, injunction, order or decree shall prohibit the Closing;

(2) all of the conditions to the obligations of Purchaser under the Phase II Credit Agreement shall have been satisfied or waived; and

(3) no event or circumstance described in Section 5.15(d) shall have occurred.

(b) The obligation of Purchaser to effect the Closing is also subject to the satisfaction or waiver by Purchaser at or prior to the Closing of the following conditions:

(1) no provision of any applicable law or regulation and no judgment, injunction, order or decree shall prohibit or restrict Purchaser or any of its Affiliates from owning, voting or converting the Preferred Stock in accordance with the terms thereof;

(2) the representations and warranties of the Company set forth in Section 2.1 hereof shall (i) have been true and correct when made and (ii) (except with respect to representations and warranties made in Section 2.1 that speak only as of a specified date) (A) in the case of representations and warranties that are qualified as to materiality, be true and correct and (B) in all other cases, be true and correct in all material respects, as of the Closing Date with the same force and effect as though made on and as of the Closing Date;

(3) The Company shall not be in breach in any material respect of its obligations required to be performed by it pursuant to this Agreement at or prior to the Closing; and

(4) Purchaser shall have received a certificate signed on behalf of the Company by a senior executive officer certifying to the effect that the conditions set forth in Section 1.3(b)(2) and (3) have been satisfied.

(c) The obligation of the Company to effect the Closing is also subject to the satisfaction or waiver by the Company at or prior to the Closing of the following conditions:

(1) Purchaser shall not be in breach in any material respect of its obligations required to be performed by it pursuant to this Agreement at or prior to the Closing;

(2) The representations and warranties of the Purchaser set forth in Section 2.2 hereof shall (i) have been true and correct when made and (ii) (except with respect to representations and warranties made in Section 2.2 that speak only as of a specified date) (A) in the case of representations and warranties that are qualified as to materiality, be true and correct and (B) in all other cases, be true and correct in all material respects, as of the Closing Date with the same force and effect as though made on and as of the Closing Date; and

(3) the Company shall have received a certificate signed on behalf of Purchaser by a senior executive officer certifying to the effect that the condition set forth in Section 1.3(c)(1) and (2) has been satisfied.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of the Company. The Company represents and warrants to Purchaser as of the date of this Agreement (except to the extent made only as of a specified date in which case as of such date), that:

(a) Organization and Authority.

(1) The Company is a corporation duly organized and validly existing under the laws of the State of Delaware, is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified and where failure to be so qualified would have a material adverse effect on the Company. The Company has furnished to Purchaser true, correct and complete copies of the Certificate of Incorporation and the bylaws of the Company as in effect on the date of this Agreement (the "Bylaws").

(2) Each Company Subsidiary is duly organized and validly existing under the laws of its jurisdiction of organization, is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified and where failure to be so qualified would have a material adverse effect on the Company or on the Company and its Subsidiaries, taken as a whole. As used herein, "Subsidiary" means, with respect to any person, any corporation, partnership, joint venture, limited liability company or other entity (x) of which such person or a subsidiary of such person is a general partner or (y) of which a majority of the voting securities or other voting interests, or a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or persons performing similar functions with respect to such entity, is directly or indirectly owned by such person and/or one or more subsidiaries thereof; and "Company Subsidiary" means any Subsidiary of the Company.

(b) Capitalization.

(1) The authorized capital stock of the Company consists of 8,000,000,000 shares of common stock, par value $0.001 per share, of the Company ("Common Stock") and 50,000,000 shares of preferred stock, par value $0.001 per share, of the Company (the "Company Preferred Stock"). As of the close of business on February 13, 2009 (the "Capitalization Date"), there were 3,793,193,708 shares of Common Stock outstanding and 24,808,959 shares of Company Preferred Stock outstanding, consisting of 24,808,959 shares of Series A Convertible Preferred Stock, par value $0.001 per share ("Series A Preferred Stock"). As of the close of business on the Capitalization Date, (i) 162,034,322 shares of Common Stock were reserved for issuance upon the exercise or payment of stock options outstanding on such date ("Company Stock Options"), and 4,364,398 shares of Common Stock were reserved for issuance upon the exercise or payment of stock units or other equity-based incentive awards granted pursuant to any plans, agreements or arrangements of the Company and outstanding on such date (collectively,

the "Company Stock Awards"), (ii) 61,274 shares of Common Stock were reserved for issuance upon the conversion of the Sirius 8 3/4% Convertible Subordinated Notes due 2009, (iii) 38,719,790 shares of Common Stock were reserved for issuance upon the conversion of the Sirius 2 1/2% Convertible Notes due 2009, (iv) 43,396,216 shares of Common Stock were reserved for issuance upon the conversion of the Sirius 3 1/4% Convertible Notes due 2011, (v) 293,333,333 shares of Common Stock were reserved for issuance upon the exchange of the XM Satellite Radio Inc. 7% Exchangeable Senior Subordinated Notes due 2014, (vi) 36,800,000 shares of Common Stock were reserved for issuance upon the conversion of the XM Satellite Radio Holdings Inc. 10% Convertible Senior Notes due 2009, (vii) 48,096,155 shares of Common Stock were reserved for issuance upon the conversion of the XM Satellite Radio Holdings Inc. 10% Senior Secured Discount Convertible Notes due 2009, (viii) 87,196,026 shares of Common Stock were reserved for issuance upon exercise of warrants to purchase Common Stock, (ix) no shares of Common Stock were held by the Company in its treasury or by its Subsidiaries and (x) 24,808,959 shares of Common Stock were reserved for issuance upon the conversion of the Series A Convertible Preferred Stock. All of the issued and outstanding shares of Common Stock and Company Preferred Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof.

(2) No bonds, debentures, notes or other indebtedness having the right to vote on any matters on which the stockholders of the Company may vote ("Voting Debt") are issued and outstanding. As of the date of this Agreement, except (i) pursuant to any cashless exercise provisions of any Company Stock Options or pursuant to the surrender of shares to the Company or the withholding of shares by the Company to cover tax withholding obligations under Company Stock Options or Company Stock Awards, and (ii) as set forth in Section 2.1(b)(1), the Company does not have and is not bound by any outstanding options, warrants, calls, commitments or other agreements calling for the purchase or issuance of, or securities or rights convertible into, or exchangeable for, any shares of Common Stock or Company Preferred Stock or any other equity securities of the Company or Voting Debt or any securities representing the right to purchase or otherwise receive any shares of capital stock of the Company (including any rights plan or agreement).

(c) Authorization. (1) The Company has the corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance of this Agreement by the Company and the consummation of the transactions contemplated hereby have been duly authorized by the board of directors of the Company (the "Board of Directors"). This Agreement has been duly and validly executed and delivered by the Company and, assuming due authorization, execution and delivery by Purchaser, is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles). No other corporate proceedings are necessary for the execution and delivery by the Company of this Agreement, the performance by it of its obligations hereunder or the consummation by it of the transactions contemplated hereby.

(2) No vote of the stockholders of the Company is required under applicable law, under the Certificate of Incorporation or Bylaws, or under any contract between the Company and any securityholder of the Company, to authorize the issuance of the Preferred Stock in accordance with this agreement or to authorize the issuance of the Common Stock upon conversion of the Preferred Stock in accordance with the Preferred Stock Certificates of Designations, as applicable.

(3) Neither the execution and delivery by the Company of this Agreement, nor the consummation of the transactions contemplated hereby, nor compliance by the Company with any of the provisions hereof (including the conversion or exercise provisions of the Preferred Stock), will (A) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of any Lien upon any of the material properties or assets of the Company or any Company Subsidiary under any of the terms, conditions or provisions of (i) the Certificate of Incorporation or Bylaws or the certificate of incorporation, charter, bylaws or other governing instrument of any Company Subsidiary or (ii) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which it may be bound, or to which the Company or any Company Subsidiary or any of the properties or assets of the Company or any Company Subsidiary may be subject, or (B) violate any law, statute, ordinance, rule, regulation, permit, franchise or any judgment, ruling, order, writ, injunction or decree applicable to the Company or any Company Subsidiary or any of their respective properties or assets, except in the case of clauses (A)(ii) and (B) for such violations, conflicts and breaches as would not reasonably be expected to have a material adverse effect on the Company.

(d) Sale of Securities. Based in part on Purchaser's representations in Section 2.2(c), the offer and sale of the Preferred Stock is exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder (the "Securities Act"). Neither the Company, nor anyone acting on behalf of it, has offered or sold or will offer or sell any securities, or has taken or will take any other action (including, without limitation, any offering of any securities of the Company under circumstances that would require, under the Securities Act, the integration of such offering with the offering and sale of the Preferred Stock), that would subject the issuance of the Preferred Stock to the registration provisions of the Securities Act.

(e) Status of Securities. The shares of Preferred Stock to be issued pursuant to this Agreement, and the shares of Common Stock to be issued upon conversion of such Preferred Stock, and any shares of Series B-1 Preferred Stock to be issued upon conversion of shares of Series B-2 Preferred Stock into shares of Series B-1 Preferred Stock, have been duly authorized by all necessary corporate action. When issued and sold against receipt of the consideration therefor as provided in this Agreement, such shares of Preferred Stock will be validly issued, fully paid and nonassessable, will not subject the holders thereof to personal liability, will not be subject to preemptive rights of any other stockholder of the Company, and will have the terms and conditions and entitle the holders thereof to the rights set forth therein. Upon any conversion

of any shares of Preferred Stock into Common Stock pursuant to the Preferred Stock Certificates of Designations, the shares of Common Stock issued upon such conversion will be validly issued, fully paid and nonassessable, will not subject the holder thereof to personal liability and will not be subject to preemptive rights of any other stockholder of the Company. Upon any conversion of any shares of Series B-2 Preferred Stock into shares of Series B-1 Preferred Stock pursuant to the Series B-2 Preferred Stock Certificate of Designations, the shares of Series B-1 Preferred Stock issued upon such conversion will be validly issued, fully paid and nonassessable, will not subject the holder thereof to personal liability and will not be subject to preemptive rights of any other stockholder of the Company. The shares of Series B-1 Preferred Stock to be issued upon any conversion of shares of Series B-2 Preferred Stock into Series B-1 Preferred Stock, and the shares of Common Stock to be issued upon any conversion of shares of Preferred Stock into Common Stock, have been duly reserved for such issuance.

(f) Anti-takeover Provisions Not Applicable. The Board of Directors has taken all necessary action to ensure that the transactions contemplated by this Agreement and the consummation of any of the transactions contemplated hereby will be deemed to be exceptions to the provisions of Section 203 of the Delaware General Corporation Law ("DGCL"), and that any other similar "moratorium," "control share," "fair price," "takeover" or "interested stockholder" law does not and will not apply to this Agreement or to any of the transactions contemplated hereby. Without limiting the generality of the foregoing, on or before February 17, 2009, the Board of Directors duly adopted a resolution in the form attached hereto as Exhibit C, which resolution is in full force and effect and shall not be rescinded or amended.

(g) Brokers and Finders. Except for J.P. Morgan Securities Inc. and Evercore Group L.L.C., neither the Company nor its Subsidiaries or any of their respective officers, directors, employees or agents has employed any broker or finder or incurred any liability for any financial advisory fees, brokerage fees, commissions or finder's fees, and no broker or finder has acted directly or indirectly for the Company in connection with this Agreement or the transactions contemplated hereby.

2.2 Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to the Company, as of the date hereof (except to the extent made only as of a specified date in which case as of such date), that:

(a) Organization and Authority. Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified and where failure to be so qualified would be reasonably expected to materially and adversely affect Purchaser's ability to perform its obligations under this Agreement or consummate the transactions contemplated hereby on a timely basis, and Purchaser has the corporate or other power and authority and governmental authorizations to own its properties and assets and to carry on its business as it is now being conducted.

(b) Authorization. (1) Purchaser has the corporate or other power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions

contemplated hereby have been duly authorized by all requisite action on the part of Purchaser, and no further approval or authorization by any of its stockholders, partners, members or other equity owners, as the case may be, is required. This Agreement has been duly and validly executed and delivered by Purchaser and assuming due authorization, execution and delivery by the Company, is a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles).

(2) Neither the execution, delivery and performance by Purchaser of this Agreement, nor the consummation of the transactions contemplated hereby, nor compliance by Purchaser with any of the provisions hereof, will (A) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of any Lien upon any of the properties or assets of Purchaser under any of the terms, conditions or provisions of (i) its governing instruments (or (ii) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Purchaser is a party or by which it may be bound, or to which Purchaser or any of the properties or assets of Purchaser may be subject, or (B) subject to compliance with the statutes and regulations referred to in the next paragraph, violate any law, statute, ordinance, rule or regulation, permit, concession, grant, franchise or any judgment, ruling, order, writ, injunction or decree applicable to Purchaser or any of their respective properties or assets except in the case of clauses (A)(ii) and (B) for such violations, conflicts and breaches as would not reasonably be expected to materially and adversely affect Purchaser's ability to perform its respective obligations under this Agreement or consummate the transactions contemplated hereby on a timely basis.

(3) Other than the securities or blue sky laws of the various states, no notice to, registration, declaration or filing with, exemption or review by, or authorization, order, consent or approval of, any court, administrative agency or commission or other governmental authority or instrumentality, whether federal, state, local or foreign, and any applicable industry self-regulatory organization (each, a "Governmental Entity"), nor expiration or termination of any statutory waiting period, is necessary for the consummation by Purchaser of the transactions contemplated by this Agreement.

(c) Purchase for Investment. Purchaser acknowledges that the Preferred Stock has not been registered under the Securities Act or under any state securities laws. Purchaser (1) is acquiring the Preferred Stock pursuant to an exemption from registration under the Securities Act solely for investment with no present intention to distribute any of the Preferred Stock to any person, (2) will not sell or otherwise dispose of any of the Preferred Stock, except in compliance with the registration requirements or exemption provisions of the Securities Act and any other applicable securities laws, (3) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its investment in the Preferred Stock and of making an informed investment decision, (4) is an "accredited investor" (as that term is defined by Rule 501 of the Securities Act) and (5) has been

furnished with or has had full access to all the information that it considers necessary or appropriate to make an informed investment decision with respect to the Preferred Stock, (B) has had an opportunity to discuss with management of the Company the intended business and financial affairs of the Company and to obtain information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to it or to which it had access and (C) can bear the economic risk of (x) an investment in the Preferred Stock indefinitely and (y) a total loss in respect of such investment. Purchaser has such knowledge and experience in business and financial matters so as to enable it to understand and evaluate the risks of and form an investment decision with respect to its investment in the Preferred Stock and to protect its own interest in connection with such investment.

(d) Financial Capability. Purchaser currently has available funds necessary to consummate the Closing on the terms and conditions contemplated by this Agreement and the Credit Agreements.

(e) Brokers and Finders. Except for UBS Securities LLC and Lazard Ltd., neither Purchaser nor its Affiliates or any of their respective officers, directors, employees or agents has employed any broker or finder or incurred any liability for any financial advisory fees, brokerage fees, commissions or finder's fees, and no broker or finder has acted directly or indirectly for Purchaser, in connection with this Agreement or the transactions contemplated hereby.

ARTICLE III

COVENANTS

3.1 Filings; Other Actions. Each of Purchaser, on the one hand, and the Company, on the other hand, will cooperate and consult with the other and use reasonable best efforts to prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents, and to obtain all necessary permits, consents, orders, approvals and authorizations of, or any exemption by, all third parties and Governmental Entities, and the expiration or termination of any applicable waiting period, necessary or advisable to consummate the transactions contemplated by this Agreement, and to perform the covenants contemplated by this Agreement. Each party shall execute and deliver both before and after the Closing such further certificates, agreements and other documents and take such other actions as the other parties may reasonably request to consummate or implement such transactions or to evidence such events or matters. In particular, Purchaser will use its reasonable best efforts to obtain or submit, and the Company will cooperate as may reasonably be requested by Purchaser to help Purchaser obtain or submit, as the case may be, as promptly as practicable, the approvals and authorizations of, filings and registrations with, and notifications to, or expiration or termination of any applicable waiting period, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") or applicable competition or merger control laws of other jurisdictions, prior to the conversion of any Series B-2 Preferred Stock into Common Stock or Series B-1 Preferred Stock. Without limiting the foregoing, to the extent required, Purchaser and the Company shall prepare and file a Notification and Report Form pursuant to the HSR Act in connection with the proposed acquisition of voting securities of the Company in excess of the applicable filing thresholds as promptly as practicable after the

date of this Agreement. Purchaser and the Company will have the right to review in advance, and to the extent practicable each will consult with the other, in each case subject to applicable laws relating to the exchange of information, all the information relating to such other party, and any of their respective Affiliates, which appears in any filing made with, or written materials submitted to, any third party or any Governmental Entity in connection with the transactions contemplated by this Agreement. In exercising the foregoing right, each of the parties hereto agrees to act reasonably and as promptly as practicable. Each party hereto agrees to keep the other party apprised of the status of matters referred to in this Section 3.1. Purchaser shall promptly furnish the Company, and the Company shall promptly furnish Purchaser, to the extent permitted by applicable law, with copies of written communications received by it or its Subsidiaries from, or delivered by any of the foregoing to, any Governmental Entity in respect of the transactions contemplated by this Agreement. Notwithstanding anything to the contrary, (i) neither Purchaser nor any other Liberty Party shall be required to take (or commit to take) any actions pursuant to this Section 3.1, (A) if any such actions would reasonably be expected to have a material adverse effect on the Liberty Capital tracking stock group of Liberty Media Corporation or any business attributed to such tracking stock group, or (B) if any such actions would reasonably be expected to have an adverse effect on any other tracking stock group of Liberty Media Corporation, or any business attributable to any such other tracking stock group, or (C) if Purchaser determines, in good faith, that such actions would reasonably be expected to have a material adverse effect on the Company and its Subsidiaries, or any business thereof. Notwithstanding anything to the contrary, neither the Company nor any its Subsidiaries shall be required to take (or commit to take) any actions pursuant to this Section 3.1, if the Company determines, in good faith, that such actions would reasonably be expected to have a material adverse effect on the Company and its Subsidiaries, taken as a whole.

3.2 Corporate Actions.

(a) Authorized Common Stock. At any time that any Preferred Stock is outstanding, the Company shall from time to time take all lawful action within its control to cause the authorized capital stock of the Corporation to include a sufficient number of authorized but unissued shares of Common Stock to satisfy the conversion requirements of all shares of Preferred Stock then outstanding.

(b) Anti-Takeover Provisions. From and after the date hereof, the Company shall not (i) amend, modify or rescind the resolution specified in Section 2.1(f) and Exhibit C attached hereto or (ii) adopt any "poison pill" or shareholder rights plan, or any charter or bylaw provision, in any case that would materially adversely affect the Purchaser's ability to acquire and dispose of Equity Securities from time to time to a Liberty Party or, after the third anniversary of the Closing Date, in block transactions or otherwise (subject to complying with Section 4.1 and Section 4.2 hereof) or that otherwise would impose material economic burdens on the Purchaser's ability to do so (an "Anti-Takeover Provision").

(c) Certificates of Designation; Conversion Rate. Prior to the Closing, the Company shall file in the office of the Secretary of State of the State of Delaware the Preferred Stock Certificates of Designations substantially in the forms attached to this Agreement as Exhibit A and Exhibit B, with such changes thereto as the parties may reasonably agree. The Conversion Rate (as defined in the Preferred Stock Certificates of Designations) will be a rate such that

assuming all shares of the Preferred Stock were converted into Common Stock on the Closing Date, the Preferred Stock would, on an as-converted basis, represent 40% of the total outstanding Common Stock (assuming for purposes of this calculation that all In The Money Securities are converted into Common Stock) on the Closing Date.

3.3 Equity Issuances. Prior to the Closing, the Company shall not issue or agree to issue options, warrants, rights or other securities convertible into, or exercisable or exchangeable for, shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock, other than in connection with stock options or other equity awards issued or granted to officers, employees, consultants or directors of the Company pursuant to any compensation plan or other employee benefit plan or arrangement in effect as of the date hereof or subsequently approved by stockholders; provided, however, that the shares issuable in respect of such stock options or other equity awards so granted will not exceed, in the aggregate, 5% of the number of shares of Common Stock outstanding on the Capitalization Date.

3.4 Confidentiality. Each party to this Agreement will hold, and will cause its respective Affiliates and their directors, officers, employees, agents, consultants and advisors to hold, in strict confidence, unless disclosure to a regulatory authority is necessary or appropriate in connection with any necessary regulatory approval or unless disclosure is required by judicial or administrative process or, in the written opinion of its counsel, by other requirement of law or the applicable requirements of any regulatory agency or relevant stock exchange, all non-public records, books, contracts, instruments, computer data and other data and information (collectively, "Information") concerning the other party hereto furnished to it by such other party or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (1) previously known by such party on a non-confidential basis, (2) in the public domain through no fault of such party or (3) later lawfully acquired from other sources by the party to which it was furnished), and neither party hereto shall release or disclose such Information to any other person, except its auditors, attorneys, financial advisors, other consultants and advisors.

ARTICLE IV

ADDITIONAL AGREEMENTS

4.1 Standstill. (a) Purchaser agrees that until the second anniversary of the Closing Date, without the prior written approval of the Independent Common Directors, none of Purchaser or any of its Affiliates will, directly or indirectly in any way, acquire, offer or propose to acquire or agree to acquire, Beneficial Ownership of any Common Stock of the Company if such acquisition would result in Purchaser or its Affiliates having Beneficial Ownership of 49.9% or more of the outstanding shares of Common Stock of the Company.

(b) Purchaser agrees that from the second anniversary of the Closing Date through the third anniversary of the Closing Date, without the prior written approval of the Independent Common Directors, none of Purchaser or any of its Affiliates will, directly or indirectly in any way, acquire, offer or propose to acquire or agree to acquire, Beneficial Ownership of any outstanding shares of Common Stock of the Company if such acquisition would result in Purchaser or its Affiliates having Beneficial Ownership of 49.9% or more of the outstanding

shares of Common Stock of the Company, unless such acquisition or offer or agreement to acquire such Common Stock is made pursuant to a Permitted Tender Offer (for the avoidance of doubt, for purposes of calculating the Beneficial Ownership of Purchaser and its Affiliates hereunder, (x) any security that is convertible into, or exercisable for, any Common Stock that is Beneficially Owned by Purchaser or its Affiliates shall be treated as fully converted or exercised, as the case may be, into the underlying Common Stock and (y) Common Stock and securities convertible into, or exercisable for, Common Stock, that are Beneficially Owned by Purchaser and its Affiliates shall be aggregated).

(c) Except to the extent expressly permitted by Section 4.1(a) or (b), Purchaser agrees that until the third anniversary of the Closing Date, without the prior written approval of the Independent Common Directors, none of Purchaser or any of its Affiliates will, directly or indirectly:

(1) enter into or agree, offer, propose or seek (either publicly or privately, except to the Board of Directors or the Independent Common Directors in a manner that does not require the Company to publicly disclose) to enter into, or otherwise be involved in or part of, any acquisition transaction, merger or other business combination relating to all or part of the Company or any of the Company Subsidiaries or any acquisition transaction for all or part of the assets of the Company or any Company Subsidiary or any of their respective businesses;

(2) make, or in any way participate in, any "solicitation" of "proxies" (as such terms are defined under Regulation 14A under the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder (the "Exchange Act") disregarding clause (iv) of Rule 14a-1(2) and including any otherwise exempt solicitation pursuant to Rule 14a-2(b)) to vote, or seek to advise or influence any person or entity with respect to the voting of, any voting securities of the Company or any Company Subsidiary; *provided* that this subsection shall not be deemed to restrict (x) the Preferred Stock Directors from participating as members of the Board of Directors and any committees thereof in their capacity as such or (y) any Liberty Party from opposing publicly or privately, voting against and encouraging others to vote against any proposal of a third party regarding a merger or other business combination, or opposing publicly or privately any tender or exchange offer, regardless of whether such proposal or offer is supported by the Board of Directors;

(3) call or seek to call a meeting of the stockholders of the Company or any of the Company Subsidiaries or initiate any stockholder proposal for action by stockholders of the Company or any of the Company Subsidiaries, form, join or in any way participate in a "group" (within the meaning of Section 13(d)(3) of the Exchange Act and the rules and regulations promulgated thereunder) with respect to any voting securities of the Company, or seek, propose or otherwise act alone or in concert with others, to influence or control the management, board of directors or policies of the Company or any Company Subsidiaries; *provided* that this subsection shall not be deemed to restrict the Preferred Stock Directors from participating as members of the Board of Directors and any committees thereof in their capacity as such; or

(4) bring any action or otherwise act to contest the validity of this Section 4.1 or seek a release of the restrictions contained herein, or make a public request to amend or waive any provision of this Section 4.1.

(d) The provisions of Section 4.1(a), (b), and (c), and Section 4.2, shall terminate immediately and automatically upon the first to occur of any of the foregoing:

(1) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Company or any material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(2) the Company or any material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (1) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or (v) make a general assignment for the benefit of creditors;

(3) any proposal relating to a merger or other transaction, pursuant to which Purchaser or any of its Affiliates would acquire majority control of the Company, shall be submitted to a vote of the holders of Common Stock of the Company pursuant to Section 4.1(a), (b) or (c) with the prior written approval of the Independent Common Directors, and such proposal shall have received the affirmative vote of a majority of the shares of Common Stock outstanding immediately prior to the commencement of such Permitted Tender Offer and not owned by Purchaser or any of its Affiliates; or

(4) after the second anniversary of the Closing Date, the Purchaser shall consummate the purchase of shares of Common Stock tendered pursuant to a Permitted Tender Offer in compliance with Section 4.1(b), if the number of shares tendered in such Permitted Tender Offer constituted a majority of the shares of Common Stock outstanding immediately prior to the commencement of such Permitted Tender Offer and not owned by Purchaser or any of its Affiliates.

(e) For purposes of this Agreement,

(1) "<u>Closing Price</u>" means the closing sale price or, if no closing sale price is reported, the last reported sale price of the shares of the Common Stock (or other relevant

capital stock or equity interest) on The NASDAQ Global Select Market on such date. If the Common Stock (or other relevant capital stock or equity interest) is not traded on The NASDAQ Global Select Market on any date of determination, the Closing Price of the Common Stock (or other relevant capital stock or equity interest) on such date of determination means the closing sale price as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or other relevant capital stock or equity interest) is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national or regional securities exchange on which the Common Stock (or other relevant capital stock or equity interest) is so listed or quoted, or if the Common Stock (or other relevant capital stock or equity interest) is not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price for the Common Stock (or other relevant capital stock or equity interest) in the over-the-counter market as reported by Pink Sheets LLC or similar organization, or, if that bid price is not available, the market price of the Common Stock (or other relevant capital stock or equity interest) on that date as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose

(2) "Independent Common Director" means any director who (i) is or would be an "independent director" with respect to the Company and with respect to Purchaser pursuant to NASDAQ Rule 4200(a)(15) and (ii) is not a Preferred Stock Director.

(3) "Preferred Stock Director" means any director selected to be a director by Purchaser prior to Closing and additional directors who take office after the Closing who are designated by Purchaser pursuant to the Series B-1 Preferred Stock Certificate of Designations, whether or not such person is an independent director with respect to the Company pursuant to NASDAQ Rule 4200(a)(15).

(4) "Permitted Tender Offer" is a cash tender offer for all of the outstanding shares of Common Stock that are not Beneficially Owned by Purchaser or its Affiliates at a price per share greater than the Closing Price of the Common Stock on the trading day immediately prior to the earlier of the public announcement or commencement of such tender offer.

4.2 Transfer Restrictions.

(a) Except as otherwise permitted in this Agreement, until the second anniversary of the Closing, Purchaser will not Transfer any Preferred Stock or Common Stock issued upon conversion of the Preferred Stock.

(b) Notwithstanding Section 4.2(a), Purchaser shall be permitted to Transfer any portion or all of its Preferred Stock or Common Stock issued upon conversion of the Preferred Stock at any time under the following circumstances:

(1) Transfers to (A) any Affiliate controlled by or under common control with Purchaser, (B) any Qualified Distribution Transferee or any Affiliate controlled by or under common control with such Qualified Distribution Transferee or (C) any other

Liberty Party or any Affiliate controlled by or under common control with such Liberty Party, but only if the transferee agrees in writing for the benefit of the Company (in form and substance satisfactory to the Company and with a copy thereof to be furnished to the Company) to be bound by the terms of this Agreement (any such transferee shall be included in the term "Purchaser").

(2) Transfers pursuant to any merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or change of control involving the Company; *provided* that such transaction has been approved by the Board of Directors.

(3) In the event that the Purchaser has not received clearance under the HSR Act to convert all the shares of Series B-2 Preferred Stock initially issued to Purchaser at Closing into Series B-1 Preferred Stock or other voting stock of the Company, by December 31, 2009, Purchaser shall be entitled to Transfer all or any portion of its shares of Preferred Stock, in one or a series of transactions to third parties, in such amounts and on such basis as the Purchaser, in its sole discretion, shall determine; provided, that, Purchaser shall not Transfer to a third party transferee any Preferred Stock if as a result of such Transfer such transferee would Beneficially Own more than 4.9% of the outstanding Common Stock on an as converted basis; provided further, however, that any sales by Purchaser in a public offering intended to be widely distributed shall be deemed not to violate the condition in the immediately preceding proviso.

(c) Purchaser agrees that prior to December 31, 2009 it shall not, directly or indirectly, enter into any Hedging Transaction or any other transaction, agreement or arrangement the value of which is based upon or related to the value of any securities of the Company. After such date Purchaser may, directly or indirectly, enter into any Hedging Transaction or any other transaction, agreement or arrangement the value of which is based upon or related to the value of any securities of the Company to the extent such Hedging Transaction or such other transaction, agreement or arrangement relates to no more than 50% of the shares of Common Stock Beneficially Owned by Purchaser.

4.3 Legend. (a) Purchaser agrees that all certificates or other instruments representing the Preferred Stock or Common Stock subject to this Agreement will bear a legend substantially to the following effect:

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO TRANSFER AND OTHER RESTRICTIONS SET FORTH IN AN INVESTMENT

AGREEMENT, DATED AS OF FEBRUARY 17, 2009, COPIES OF WHICH ARE ON FILE WITH THE SECRETARY OF THE ISSUER.

(a) Upon request of Purchaser, upon receipt by the Company of an opinion of counsel reasonably satisfactory to the Company to the effect that such legend is no longer required under the Securities Act and applicable state laws, the Company shall promptly cause the first paragraph of the legend to be removed from any certificate for any Preferred Stock or Common Stock to be Transferred in accordance with the terms of this Agreement and the second paragraph of the legend shall be removed upon the expiration of such transfer and other restrictions set forth in this Agreement. Purchaser acknowledges that the Preferred Stock and Common Stock issuable upon conversion of the Preferred Stock have not been registered under the Securities Act or under any state securities laws and agrees that it will not sell or otherwise dispose of any of the Preferred Stock or Common Stock issuable upon conversion of the Preferred Stock, except in compliance with the registration requirements or exemption provisions of the Securities Act and any other applicable securities laws.

4.4 Reservation for Issuance. The Company will reserve that number of shares of Common Stock sufficient for issuance upon exercise or conversion of Preferred Stock owned at any time by Purchaser without regard to any limitation on such conversion.

4.5 [Reserved]

4.6 No-Shop; Competing Proposals; Right to Terminate and Pay Termination Fee; Purchaser's Right to Improve Terms. (a) The Company agrees that until the earlier of the Closing Date and April 15, 2009 (the "Non-Solicitation Period"): (i) it and its executive officers and directors shall not, (ii) its Subsidiaries and its Subsidiaries' executive officers and directors shall not, and (iii) it shall use reasonable best efforts to ensure that its and its Subsidiaries' agents and representatives shall not, (A) directly or indirectly, initiate, solicit or knowingly encourage or facilitate any inquiries or the making of any proposal or offer with respect to (x) a tender offer or exchange offer or proposal for a merger, consolidation or other business combination involving the Company and its Subsidiaries, or an investment in Equity Securities representing 10% or more of the outstanding Equity Securities of the Company or (y) any proposal or offer to Refinance, or to raise funds to be available to Refinance, all or any substantial portion of the outstanding indebtedness of XM Opco and/or , XM Satellite Radio Holdings Inc. ("XM Holdings") maturing in 2009, other than the transactions contemplated by this Agreement and the Credit Agreements (any such proposal or offer being hereinafter referred to as a "Competing Proposal", and any such transaction, a "Competing Transaction") or (B) approve or recommend, or propose to approve or recommend, or announce or publicize, or execute or enter into any letter of intent, agreement in principle, option agreement, acquisition agreement or other agreement relating to a Competing Proposal, or (C) directly or indirectly, engage in any negotiations or discussions concerning, or provide access to its properties, books and records or any confidential information or data to, any person relating to a Competing Proposal, or (D) take any action to make inapplicable the provisions of any statute or law of the type described in Section 2.1(f) (including approving any transaction under, or a third party becoming an "interested stockholder" under, Section 203 of the DGCL). Notwithstanding the foregoing, nothing contained in this Agreement shall prevent the Company or its Board of Directors, so long as the Company is in compliance with its obligations under this Section 4.6, from (i) taking and

disclosing to its stockholders a position contemplated by Rule 14d-9 and Rule 14e-2(a) promulgated under the Exchange Act (or any similar communication to stockholders in connection with the making or amendment of a tender offer or exchange offer) or from making any legally required disclosure to stockholders with regard to a Competing Proposal, (ii) providing access to its properties, books and records and providing information or data in response to a request therefor by a person who has made an unsolicited bona fide written Competing Proposal, provided that (A) the Company shall have previously provided, or shall concurrently therewith provide, such information to the Purchaser, and (B) the Company receives from the person so requesting such information an executed confidentiality agreement on terms substantially similar to those contained in the confidentiality agreement between the Company and an Affiliate of the Purchaser, dated as of February 4, 2009 (except for such changes specifically necessary in order for the Company to be able to comply with its obligations under this Agreement), (iii) engaging in any negotiations or discussions with any person who has made an unsolicited bona fide written Competing Proposal, or (iv) recommending an unsolicited bona fide written Competing Proposal; if and only to the extent that in connection with the foregoing clauses (ii), (iii) and (iv), the Board of Directors of the Company shall have determined in good faith, after consultation with its legal counsel and financial advisors that, (x) in the case of clause (iv) above only, such Competing Proposal, if accepted, is reasonably capable of being consummated, taking into account legal, financial, regulatory, timing and similar aspects of the proposal and the person making the proposal and would, if consummated, result in a transaction more favorable to the Company's stockholders from a financial point of view than the transaction contemplated by this Agreement or the Credit Agreements (any such more favorable Competing Proposal being referred to in this Agreement as a "Superior Proposal") and (y) in the case of clauses (ii) and (iii) above only, there is a reasonable possibility that such actions could lead to a Superior Proposal.

(b) The Company represents and warrants that it has ceased and caused to be terminated any and all existing activities, discussions or negotiations with any persons conducted heretofore with respect to any Competing Proposal. During the Non-Solicitation Period, the Company shall notify Purchaser promptly (but in no event later than 12 hours) after receipt of any Competing Proposal, or any material modification of or material amendment to any Competing Proposal or any request for nonpublic information relating to the Company in connection with any Competing Proposal. Such notice to Purchaser shall be made orally and in writing, and shall indicate the identity of the Person making the Competing Proposal or such request and the material terms of any such Competing Proposal or request or any material modification or material amendment to a Competing Proposal. During the Non-Solicitation Period, the Company (i) shall keep Purchaser reasonably informed on a current basis of any material changes in the status and any material changes or modifications in the terms of any such Competing Proposal, indication or request and (ii) promptly (but in no event later than 12 hours) notify Purchaser if it enters into discussions or negotiations concerning any Competing Proposal in accordance with 4.6(a).

(c) Notwithstanding any other provision of this Agreement, *if*, (i) at any time during the Non-Solicitation Period, the Company's Board of Directors determines in good faith, after consultation with its financial advisors and outside legal counsel, in response to any Competing Proposal that did not result from a material breach of Section 4.6(a) or Section 4.6(d), that such proposal is a Superior Proposal or (ii) at any time after the Non-Solicitation Period, the Board of

Directors determines in its sole discretion that a termination is in the best interests of the Company, then the Company or its Board of Directors may terminate this Agreement and the Phase II Credit Agreement by notice to Purchaser; provided, however, that the Company shall not terminate this Agreement and the Phase II Credit Agreement pursuant to this Section 4.6(c), and any purported termination pursuant to this Section 4.6(c) shall be void and of no force or effect, unless the Company prior to or concurrently with such termination pursuant to this Section 4.6(c) pays to Purchaser the Termination Fee in immediately available funds, free and clear of any liens and encumbrances. "Termination Fee" means U.S. $7,000,000. For the avoidance of doubt, the Company shall not without the prior written approval of Purchaser (which approval may be withheld by Purchaser in its discretion) consummate a Competing Transaction, or enter into any binding agreement with respect thereto, during the term of this Agreement (whether or not during the Non-Solicitation Period), unless prior to or concurrently therewith the Company pays to Purchaser the Termination Fee and terminates this Agreement and the Phase II Credit Agreement in accordance with this Section 4.6(c).

(d) During the Non-Solicitation Period, prior to the Company exercising its right to terminate this Agreement and the Phase II Credit Agreement as provided in Section 4.6(c), the Company shall:

(1) notify Purchaser in writing, at least three days in advance of delivery of any notice of termination of this Agreement pursuant to Section 4.6(c), (it being understood that any change in financial terms or other material terms of the Competing Proposal shall extend such period by an additional Business Day from the date of receipt of such revised Competing Proposal) that the Company is considering taking such action, specifying the material terms and conditions of such Superior Proposal and the identity of the person making such Superior Proposal, and

(2) during such three day period (as extended, if applicable), the Company has considered in good faith any proposed written adjustments by Purchaser in the terms and conditions of this Agreement and/or the Phase II Credit Agreement, should Purchaser elect to propose such adjustments, and

(3) at the end of such three day period (as extended, if applicable) the Company's Board of Directors shall have determined, in good faith (after consultation with its financial advisor and outside counsel), that such Competing Proposal remains a Superior Proposal after giving effect to all of the adjustments (if any) which may be offered pursuant to this Section 4.6(d).

4.7 Registration Rights.

(a) Registration.

(1) Subject to the terms and conditions of this Agreement, the Company covenants and agrees that no later than September 30, 2009, the Company shall prepare and file with the United States Securities and Exchange Commission ("SEC") a Shelf Registration Statement covering all Registrable Securities (or otherwise designate an existing Shelf Registration Statement filed with the SEC to cover the Registrable

Securities), and, to the extent the Shelf Registration Statement has not theretofore been declared effective or is not automatically effective upon such filing, the Company shall use commercially reasonable efforts to cause such Shelf Registration Statement to be declared or become effective on or before December 31, 2009, and, subject to Section 4.7(d) and Section 4.7(f), to keep such Shelf Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of such Registrable Securities for a period from the date of its initial effectiveness until such time as there are no Registrable Securities remaining (including by refiling such Shelf Registration Statement (or a new Shelf Registration Statement) if the initial Shelf Registration Statement expires). So long as the Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) at the time of filing of the Shelf Registration Statement with the SEC, such Shelf Registration Statement shall be designated by the Company as an automatic Shelf Registration Statement.

(2) Any registration pursuant to Section 4.7(a)(1) shall be effected by means of a shelf registration on an appropriate form under Rule 415 under the Securities Act (a "Shelf Registration Statement"). If Purchaser or any other Holder intends to distribute any Registrable Securities by means of an underwritten or other marketed offering (including an offering involving one or more Hedging Counterparties) it shall promptly so advise the Company and the Company shall take all reasonable steps to facilitate such distribution, including the actions required pursuant to Section 4.7(c); *provided* that (i) the Company shall not be required to facilitate such an offering of Registrable Securities unless the expected gross proceeds from such offering exceed, in the aggregate from any one or series of related transactions, $25,000,000, and (ii) the Company shall be required to effect no more than four such offerings (provided that an offering shall not be deemed to have been effected pursuant to this Section 4.7(a)(2) unless the registration statement with respect to such offering shall have become effective and remained effective for at least 30 days, excluding any Schedule Black-Out Period or any period during which the use of such Registration Statement is suspended pursuant to Section 4.7(d), or the Purchaser shall have sold all the Registrable Securities registered for sale thereunder. The lead underwriters in any such distribution shall be selected by the Holders of a majority of the Registrable Securities to be distributed and must be reasonably acceptable to the Company.

(3) The Company shall not be required to effect a registration (including a resale of Registrable Securities from an effective Shelf Registration Statement) or an offering pursuant to Section 4.7(a): (A) with respect to securities that are not Registrable Securities; (B) during any Scheduled Black-Out Period; or (C) if the Company has notified Purchaser and all other Holders that in the judgment of the Chief Executive Officer or the Chief Financial Officer of the Company (or of the Board of Directors of the Company), it would be materially detrimental to the Company or its securityholders for such registration or offering to be effected at such time, in which event the Company shall have the right to defer such registration for the shortest period practicable and in any event for a period of not more than 90 days after receipt of the request of Purchaser or any other Holder; *provided* that such right to delay such registration or offering shall be exercised by the Company (1) only if the Company has generally exercised (or is concurrently exercising) similar black-out rights against holders of similar securities that

have registration rights and against all executive officers and directors of the Company and (2) not more than two times in any 12-month period and not more than 90 days in the aggregate in any 12-month period.

(4) If during any period when an effective Shelf Registration Statement is not available, the Company proposes to register any of its equity securities, other than a registration pursuant to Section 4.7(a)(1) or a Special Registration, and the registration form to be filed may be used for the registration or qualification for distribution of Registrable Securities, the Company will give prompt written notice to Purchaser and all other Holders of its intention to effect such a registration (but in no event less than five Business Days prior to the anticipated filing date of the related prospectus) and will include in such registration all Registrable Securities of the same class of securities as the securities to be registered by the Company with respect to which the Company has received written requests for inclusion therein within five business days after the date of the Company's notice (a "Piggyback Registration"). Any such person that has made such a written request may withdraw its Registrable Securities from such Piggyback Registration by giving written notice to the Company and the managing underwriter, if any, on or before the second business day prior to the planned filing date of the prospectus relating to such Piggyback Registration. The Company may terminate or withdraw any registration under this Section 4.7(a)(4) prior to the filing date of the prospectus relating to such registration, whether or not Purchaser or any other Holders have elected to include Registrable Securities in such registration.

(5) If the registration referred to in Section 4.7(a)(4) is proposed to be underwritten, the Company will so advise Purchaser and all other Holders as a part of the written notice given pursuant to Section 4.7(a)(4). In such event, the right of Purchaser and all other Holders to registration pursuant to Section 4.7(a) will be conditioned upon such persons' participation in such underwriting and the inclusion of such person's Registrable Securities in the underwriting, and each such person will (together with the Company and the other persons distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. If any participating person disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice to the Company, the managing underwriters and Purchaser (if Purchaser is participating in the underwriting) on or before the fifth business day prior to the planned filing date of the prospectus relating to such Piggyback Registration.

(6) If either (x) the Company grants "piggyback" registration rights to one or more third parties to include their securities in an underwritten offering under the Shelf Registration Statement or (y) a Piggyback Registration under Section 4.7(a)(4) relates to an underwritten offering on behalf of the Company, and in either case the managing underwriters advise the Company that in their reasonable opinion the number of securities requested to be included in such offering exceeds the number which can be sold without adversely affecting the marketability of such offering (including an adverse effect on the per share offering price), the Company will include in such offering only such number of securities that in the reasonable opinion of such managing underwriters can be sold without adversely affecting the marketability of the offering (including an

adverse effect on the per share offering price), which securities will be so included in the following order of priority: (A) first, the securities the Company proposes to sell, (B) then the Registrable Securities of Purchaser and all other Holders who have requested inclusion of Registrable Securities pursuant to Section 4.7(a)(2) and (C) lastly, the Registrable Securities of Purchaser and all other Holders who have requested inclusion of Registrable Securities pursuant to Section 4.7(a)(4) and any other securities of the Company that have been requested to be so included, *pro rata* on the basis of the aggregate number of such Registrable Securities or securities owned by each such person. The Company hereby covenants that it will not enter into, any registration rights or other agreement with respect to its securities that is inconsistent with the provisions of this Section 4.7, including the order of priority contemplated hereby.

(b) Except as specifically provided herein, all Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder, shall be borne by the holders of the securities so registered *pro rata* on the basis of the aggregate offering or sale price of the securities so registered.

(c) The Company shall use its reasonable best efforts, for so long as there are Registrable Securities outstanding, to take such actions as are under its control to not become an ineligible issuer (as defined in Rule 405 under the Securities Act) and to remain a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) if it has such status on the date hereof or becomes eligible for such status in the future. In addition, whenever required to effect the registration of any Registrable Securities or facilitate the distribution of Registrable Securities pursuant to an effective Shelf Registration Statement, the Company shall, as expeditiously as reasonably practicable:

(1) Prepare and file with the SEC a prospectus supplement with respect to a proposed offering of Registrable Securities pursuant to an effective registration statement and, subject to Section 4.7(d) and Section 4.7(f)(3), keep such registration statement effective and keep such prospectus supplement current until the securities described therein are no longer Registrable Securities.

(2) Prepare and file with the SEC such amendments and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(3) Reasonably in advance of filing a prospectus supplement with respect to a proposed offering of Registrable Securities with the SEC, furnish to the relevant Holder a copy of such prospectus supplement as proposed to be filed (including documents to be incorporated by reference therein, to the extent not then available via the SEC's EDGAR system, but only to the extent they expressly relate to any offering to be effected thereunder), and the Company will not file such prospectus supplement with respect to a proposed offering of Registrable Securities (or any such documents incorporated by

reference) containing any statements with respect to such Holder or the plan of distribution to which such Holder shall reasonably object in writing.

(4) If a registration statement relating to Registrable Securities is subject to review by the SEC: (A) the Company will reasonably promptly provide the relevant Holder with a copy of correspondence with the SEC in respect of such registration statement and a copy of the Company's draft responses thereto (it being understood that preliminary drafts shall not be required to be provided); and (B) the Company shall reasonably promptly provide the relevant Holder with a copy of any proposed amendment to be filed with the SEC.

(5) Furnish to the Holders and any underwriters such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned or to be distributed by them.

(6) Use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders or any managing underwriter(s), to keep such registration or qualification in effect for so long as such registration statement remains in effect, and to take any other action which may be reasonably necessary to enable such seller to consummate the disposition in such jurisdictions of the securities owned by such Holder; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(7) Give written notice to the Holders;

(A) when any registration statement filed pursuant to Section 4.7(a) or any amendment thereto has been filed with the SEC and when such registration statement or any post-effective amendment thereto has become effective;

(B) of any request by the SEC for amendments or supplements to any registration statement or the prospectus included therein or for additional information;

(C) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose;

(D) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(E) of the happening of any event that requires the Company to make changes in any effective registration statement or the prospectus related to the registration statement in order to correct an untrue statement of a material fact or include a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing (which notice shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made).

(8) Use its commercially reasonable efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 4.7(c)(7)(C) at the earliest practicable time.

(9) Upon the occurrence of any event contemplated by Section 4.7(c)(7)(E), promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or file any other required document so that, as thereafter delivered to the Holders and any underwriters, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with Section 4.7(c)(7)(E) to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Holders and any underwriters shall suspend use of such prospectus and use their commercially reasonable efforts to return to the Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in such Holder's or underwriter's possession.

(10) Use commercially reasonable efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Holders or any managing underwriter(s).

(11) If an offering is requested pursuant to Section 4.7(a)(2), enter into an underwriting or other agreement in customary form, scope and substance for the type of offering contemplated and take all such other actions reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith or by the managing underwriter(s), if any, or Hedging Counterparty to expedite or facilitate the disposition of such Registrable Securities, and in connection therewith, (A) make such representations and warranties to the Holders that are selling stockholders and the managing underwriter(s), if any, or Hedging Counterparty with respect to the business of the Company and its subsidiaries, and the Shelf Registration Statement, prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in customary form, substance and scope, and, if true, confirm the same if and when requested, (B) use its commercially reasonable efforts to furnish the underwriters or Hedging Counterparty with opinions of counsel to the Company, addressed to the managing underwriter(s), if any, or Hedging Counterparty covering the matters customarily covered in such opinions requested in underwritten offerings, (C) use its commercially reasonable efforts to obtain "cold comfort" letters from the independent

certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any business acquired by the Company, including XM Holdings, if applicable, for which financial statements and financial data are included in the Shelf Registration Statement) who have certified the financial statements included in such Shelf Registration Statement, addressed to each of the managing underwriter(s), if any, or Hedging Counterparty such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters, (D) if an underwriting agreement or agreement involving a Hedging Counterparty is entered into, the same shall contain indemnification provisions and procedures customary in similar offerings, and (E) deliver such documents and certificates as may be reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith, their counsel and the managing underwriter(s), if any, to evidence the continued validity of the representations and warranties made pursuant to clause (A) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company.

(12) Make available for inspection by a representative of the Holders that are selling stockholders, the managing underwriter(s), if any, any Hedging Counterparty and any attorneys or accountants retained by such Holders, managing underwriter(s), or Hedging Counterparty at the offices where normally kept, during reasonable business hours, financial and other records, pertinent corporate documents and properties of the Company, and cause the officers, directors and employees of the Company to supply all information in each case reasonably requested by any such representative, managing underwriter(s), attorney or accountant in connection with such Shelf Registration Statement; provided that, after the Holders Beneficially Own less than 10% of the Company's outstanding Common Stock, this clause shall only be applicable to a representative of Holders that are selling stockholders and any attorneys or accountants retained by such Holders if such Holder is named in the applicable prospectus supplement as a person who may be deemed to be an underwriter with respect to an offering and sale of Registrable Securities.

(d) Suspension of Sales. During any Scheduled Black-out Period and upon receipt of written notice from the Company that a registration statement, prospectus or prospectus supplement contains or may contain an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that circumstances exist that make inadvisable use of such registration statement, prospectus or prospectus supplement, Purchaser and each Holder of Registrable Securities shall forthwith discontinue disposition of Registrable Securities until termination of such Scheduled Black-Out Period or until Purchaser and/or Holder has received copies of a supplemented or amended prospectus or prospectus supplement, or until Purchaser and/or such Holder is advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, Purchaser and/or such Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in Purchaser and/or such Holder's possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice. The total number of days that any such suspension may be in effect in any 180 day period shall not exceed 60 days.

(e) Termination of Registration Rights. The registration rights granted under this Section 4.7 shall terminate and be of no further force and effect upon the earlier to occur of (i) the tenth anniversary of the Closing Date and (ii) the date when the Preferred Stock purchased pursuant to this Agreement and Beneficially Owned by Purchaser represent less than 5% of the outstanding Common Stock. In addition, a Holder's registration rights as to any securities held by such Holder (and its Affiliates, partners, members and former members) shall not be available unless such securities are Registrable Securities.

(f) Delay of Registration; Furnishing Information

(1) Neither Purchaser nor any Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 4.7.

(2) Neither Purchaser nor any Holder shall use any free writing prospectus (as defined in Rule 405) in connection with the sale of Registrable Securities without the prior written consent of the Company.

(3) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 4.7(c) that Purchaser and/or the selling Holders and the underwriters, if any, and any Hedging Counterparty shall furnish to the Company (i) such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be required to effect the registered offering of their Registrable Securities and (ii) the terms of any relating Hedging Transaction, final documentation relating thereto and other information reasonably requested and related thereto.

(4) The Company shall not be (i) required to file any supplement or amendment naming a Holder or a Hedging Counterparty as a selling securityholder earlier than five business days after it receives all required information from such Holder or Hedging Counterparty and (ii) obligated to file any supplement or amendment for the purpose of naming a Holder or a Hedging Counterparty as a selling securityholder more than once in any two calendar month period.

(g) Indemnification.

(1) The Company agrees to indemnify each Holder and, if a Holder is a person other than an individual, such Holder's officers, directors and each Person, if any, that controls a Holder within the meaning of the Securities Act (each, an "Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals), arising out of or based upon any untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or

supplement thereto); or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided,* that the Company shall not be liable to such Indemnitee in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (i) an untrue statement or omission made in such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Indemnitee or its plan of distribution or ownership interests which was furnished in writing to the Company by such Indemnitee for use in connection with such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto, or (ii) offers or sales effected by or on behalf such Indemnitee "by means of" (as defined in Rule 159A) a "free writing prospectus" (as defined in Rule 405) that was not authorized in writing by the Company.

(2) Each Holder agrees, severally and not jointly, to indemnify the Company and its officers and directors (each, a "Company Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals), arising out of or based upon any untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto); or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading to the extent that such untrue statement or omission was made in reliance upon and in conformity with written information furnished to the Company by such Holder for use therein.

(3) If the indemnification provided for in Section 4.7(g)(1) or (2) is unavailable to an Indemnitee or a Company Indemnitee, as applicable, with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to therein or is insufficient to hold the Indemnitee or Company Indemnitee, as applicable, harmless as contemplated therein, then the Company or the Holder(s), as applicable, in lieu of indemnifying such Indemnitee or Company Indemnitee, as applicable, shall contribute to the amount paid or payable by such Indemnitee or Company Indemnitee, as applicable, as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnitee or the Company Indemnitee, as applicable, on the one hand, and the Company or such Holder(s), as applicable, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant equitable considerations. The relative fault of the Company or Holder(s) , as applicable, on the one hand, and of the Indemnitee or Company

Indemnitee, as applicable, on the other hand, shall be determined by reference to, among other factors, whether the untrue statement of a material fact or omission to state a material fact relates to information supplied by the Company or by the Indemnitee, as applicable, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Company and each Holder agree that it would not be just and equitable if contribution pursuant to this Section 4.7(g)(3) were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 4.7(g)(1). No Indemnitee or Company Indemnitee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Company or any Holder, as applicable, if the Company or such Holder, as applicable, was not guilty of such fraudulent misrepresentation.

(h) Assignment of Registration Rights. The rights of Purchaser to registration of Registrable Securities pursuant to Section 4.7(a) may be assigned by Purchaser to a transferee of Registrable Securities so long as (a) such transferee is a Liberty Party or Qualified Distribution Transferee, (b) such transferee agrees to be bound by the terms hereof in respect of such registration rights, including Section 4.7(g) and (c) there is transferred to such transferee no less than 100,000,000 shares of Registrable Securities; *provided, however*, the transferor shall, within ten days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the number and type of Registrable Securities that are being assigned.

(i) "Market Stand-Off" Agreement; Agreement to Furnish Information. Purchaser and each Holder hereby agrees:

(1) that Purchaser shall not sell, transfer, make any short sale of, grant any option for the purchase of, any common equity securities of the Company or any securities convertible into or exchangeable or exercisable for any common equity securities of the Company held by Purchaser (other than those included in the registration), or enter into any hedging or similar transaction with the economic effect of transferring some or all of the economic benefits and/or risks of owning any common equity securities of the Company for a period specified by the representatives of the underwriters of the common equity or equity-related securities not to exceed ten days prior and 90 days following the effective date of any firm commitment underwritten registered sale of common equity securities of the Company or any securities convertible into or exchangeable or exercisable for any common equity securities of the Company by the Company for the Company's own account in which the Company gave Purchaser an opportunity to participate in accordance with Section 4.7(a)(4) through (a)(6); *provided* that all executive officers and directors of the Company enter into similar agreements and only if such persons remain subject thereto (and are not released from such agreement) for such period; *provided* that nothing herein will prevent Purchaser from making any distribution of Registrable Securities to the partners or shareholders thereof or a transfer to an Affiliate that is otherwise in compliance with applicable securities laws, so long as such distributees or transferees agree to be bound by the restrictions set forth in this Section 4.7(i) and *provided further* that nothing herein shall require Purchaser or any Holder to close-out, unwind or otherwise terminate or effectively terminate any Hedging

Transaction entered into prior to the beginning of any such "holdback" or market stand-off period (whether such holdback or stand-off period is provided for in this Agreement or otherwise);

(2) to execute and deliver such other agreements as may be reasonably requested by the Company or the representatives of the underwriters which are consistent with the foregoing obligation in Section 4.7(i)(1) or which are necessary to give further effect thereto; and

(3) if requested by the Company or the representative of the underwriters of Common Stock (or other securities of the Company), Purchaser shall provide, within ten days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act in which Purchaser participates;

provided, that clauses (1) and (2) of this Section 4.7(i) shall not apply to Purchaser or any Holder that, together with its affiliates, is the Beneficial Owner of less than 5% of the outstanding Common Stock.

(j) Clear Market. With respect to any underwritten offering of Registrable Securities by Purchaser or other Holders pursuant to this Section 4.7, the Company agrees not to effect (other than pursuant to such registration or pursuant to a Special Registration) any public sale or distribution, or to file any Shelf Registration Statement (other than such registration or a Special Registration) covering, in the case of an underwritten offering of Common Stock, any of its equity securities or any securities convertible into or exchangeable or exercisable for such securities, during the period not to exceed ten days prior and 60 days following the effective date of such offering or such longer period up to 90 days as may be requested by the managing underwriter for such underwritten offering. The Company also agrees to cause such of its directors and senior executive officers to execute and deliver customary lock-up agreements in such form and for such time period up to 90 days as may be reasonably requested by the managing underwriter.

(k) Rule 144 Reporting. With a view to making available to Purchaser and Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its commercially reasonable efforts to:

(1) make and keep public information available, as those terms are understood and defined in Rule 144(c)(1) or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of this Agreement;

(2) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and

(3) so long as Purchaser or a Holder owns any Registrable Securities, furnish to Purchaser or such Holder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Securities Act,

and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as Purchaser or Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

(l) As used in this Section 4.7, the following terms shall have the following respective meanings:

(1) "Hedging Counterparty" means a broker-dealer registered under Section 15(b) of the 1934 Act or an Affiliate thereof or any other financial institution that routinely engages in Hedging Transactions in the ordinary course of its business.

(2) "Hedging Transaction" means any transaction involving a security linked to the Registrable Shares or any security that would be deemed to be a "derivative security" (as defined in Rule 16a-1(c) under the 1934 Act) with respect to the Registrable Shares or any transaction (even if not a security) which would (were it a security) be considered such a derivative security, or which transfers some or all of the economic risk of ownership of the Registrable Shares, including any forward contract, equity swap, put or call, put or call equivalent position, collar, non-recourse loan, sale of exchangeable security or similar transaction. For the avoidance of doubt, the following transactions shall be deemed to be Hedging Transactions:

(A) transactions by a Holder in which a Hedging Counterparty engages in short sales of Common Stock pursuant to a prospectus and may use Registrable Shares to close out its short position;

(B) transactions pursuant to which a Holder sells short Common Stock pursuant to a prospectus and delivers Registrable Shares to close out its short position;

(C) transactions by a Holder in which the Holder delivers, in a transaction exempt from registration under the 1933 Act, Registrable Shares to a Hedging Counterparty who may then publicly resell or otherwise transfer such Registrable Shares pursuant to a prospectus or an exemption from registration under the 1933 Act; and

(D) a loan or pledge of Registrable Shares to a Hedging Counterparty who may then become a Permitted Transferee and sell the loaned shares or, in an event of default in the case of a pledge, then sell the pledged shares, in each case, in a public transaction pursuant to a prospectus.

(3) "Holder" means Purchaser and any other holder of Registrable Securities to whom the registration rights conferred by this Agreement have been transferred in compliance with Section 4.7(h) hereof.

(4) "register," "registered," and "registration" shall refer to a registration effected by preparing and (a) filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or

ordering of effectiveness of such registration statement or (b) filing a prospectus and/or prospectus supplement in respect of an appropriate effective registration statement on Form S-3.

(5) "Registrable Securities" means the Common Stock issuable upon conversion of the Preferred Stock (and any shares of capital stock or other equity interests issued or issuable to any Holder with respect to such securities by way of stock dividends or stock splits or in connection with a combination of shares, recapitalization, merger or other reorganization), provided that, once issued, such securities will not be Registrable Securities when (i) they are sold pursuant to an effective registration statement under the Securities Act, (ii) they may be sold pursuant to Rule 144 without limitation thereunder on volume or manner of sale, (iii) they shall have ceased to be outstanding or (iv) they have been sold in a private transaction in which the transferor's rights under this Agreement are not assigned to the transferee of the securities. No Registrable Securities may be registered under more than one registration statement at any one time.

(6) "Registration Expenses" mean all expenses incurred by the Company in effecting any registration pursuant to this Agreement, including all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, FINRA registration and filing fees, and expenses of the Company's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses and the compensation of regular employees of the Company, which shall be paid in any event by the Company.

(7) "Rule 144", "Rule 159A", "Rule 405" and "Rule 415" mean, in each case, such rule promulgated under the Securities Act (or any successor provision), as the same shall be amended from time to time.

(8) "Scheduled Black-out Period" means the period from and including the last day of a fiscal quarter of the Company to and including the business day after the day on which the Company publicly releases its earnings for such fiscal quarter.

(9) "Selling Expenses" mean all discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (other than the fees and disbursements of counsel included in Registration Expenses).

(10) "Special Registration" means the registration of (A) equity securities and/or options or other rights in respect thereof solely registered on Form S-4 or Form S-8 (or successor form) or (B) shares of equity securities and/or options or other rights in respect thereof to be offered to directors, members of management, employees, consultants, customers, lenders or vendors of the Company or Company Subsidiaries or in connection with dividend reinvestment plans

(m) Registration in Connection with Hedging Transactions.

(1) Subject, in each case to Section 4.2(c) and this Section 4.7:

(A) The Company acknowledges that from time to time a Holder may seek to enter into one or more Hedging Transactions with a Hedging Counterparty. The Company agrees that, in connection with any proposed Hedging Transaction, if, in the reasonable judgment of counsel to such Holder (after good faith consultation with counsel to the Company), it is necessary or desirable to register under the 1933 Act sales or transfers (whether short or long and whether by the Holder or by the Hedging Counterparty) of Registrable Shares or (by the Hedging Counterparty) other shares of Common Stock in connection therewith, then a Registration Statement covering Registrable Shares or such other shares of Common Stock may be used in a manner otherwise in accordance with the terms and conditions of this Agreement to register such sales or transfers under the 1933 Act.

(B) If, in the circumstances contemplated by Section 4.7(m)(1)(A), a Holder seeks to register sales or transfers of Registrable Shares (or the sale or transfer by a Hedging Counterparty of other shares of Common Stock) in connection with a Hedging Transaction at a time when a shelf Registration Statement covering Registrable Shares is effective, upon receipt of written notice thereof from the Lead Holder, the Company shall use commercially reasonable efforts to take such actions as may reasonably be required to permit such sales or transfers in connection with such Hedging Transaction to be covered by such effective Registration Statement in a manner otherwise in accordance with the terms and conditions of this Agreement, which may include, among other things, the filing of a prospectus supplement or post-effective amendment including a description of such Hedging Transaction, the name of the Hedging Counterparty, identification of the Hedging Counterparty or its Affiliates as underwriters or potential underwriters, if applicable, and any change to the plan of distribution contained in the prospectus.

(C) Any information regarding a Hedging Transaction included in a Registration Statement shall be deemed to be information provided by the Holder selling or transferring Registrable Shares or shares of Common Stock pursuant to such Registration Statement for purposes of Section 4.7(g) of this Agreement.

4.8 Participation Right. From and after the Closing, if the Company shall issue or sell New Securities pursuant to which the Company receives in the aggregate (or would receive upon the exercise of any New Security), in any one or a series of related transactions, greater than $1,000,000 in gross proceeds, in cash, property or principal amount of indebtedness retired, the Purchaser shall have the right (on the terms and subject to the conditions set forth in this Section 4.8) to purchase from the Company either New Securities or, at the Company's option, securities of the Company having substantially the same terms as the New Securities ("Liberty Party New Securities") on the same or monetarily equivalent terms and conditions as such issuance or sale of New Securities. This participation right shall be subject to the following provisions:

(a) New Issuance Notice; Notice of Election to Participate. In the event that the Company at any time issues New Securities, it shall give the Purchaser written notice (each a

"New Issuance Notice") of such issuance and documentation relating to such financing not more than five business days after the consummation of such issuance. The New Issuance Notice shall describe (i) the terms and conditions of the Liberty Party New Securities and any differences between such securities and the New Securities giving rise to the participation right, (ii) the amount of New Securities issued by the Company, (iii) the price and the general terms upon which the Company issued such New Securities and (iv) the Maximum Amount (as defined below). In order for Purchaser to exercise its participation right, Purchaser shall give the Company written notice (which notice shall be irrevocable when given) of the amount of Liberty Party New Securities it shall purchase (which amount shall not exceed its Maximum Amount) within ten days after its receipt of the applicable New Issuance Notice. The failure to respond during such ten day period shall constitute a waiver of the Purchaser's rights under this Section 4.8 in respect of such issuance. The obligation of the Company to provide such notice shall be subject to the Purchaser's written agreement to confidentiality and restrictions on trading terms reasonably acceptable to the Company. The failure of the Purchaser to agree to such terms within ten days after the date of receipt of the Company's notice as described in this clause shall constitute a waiver of the Purchaser's rights under this Section 4.8 in respect of such issuance.

(b) Calculation of the Maximum Amount. The maximum amount of Liberty Party New Securities which Purchaser may purchase pursuant to its participation right under this Section 4.8, in connection with an issuance of New Securities (the "Maximum Amount"), shall equal (i) the amount of New Securities sold or issued by the Company in the transaction giving rise to such participation right, as set forth in the applicable New Issuance Notice, multiplied by (ii) a fraction, (A) the numerator of which shall be the number of shares of Common Stock held by the Purchaser, or issuable, directly or indirectly, upon the conversion, exercise or exchange of any Preferred Stock or other securities directly or indirectly convertible into, or exercisable or exchangeable for, shares of Common Stock held by the Purchaser immediately prior to the issuance of New Securities giving rise to such participation right, and (B) the denominator of which shall be the number of shares of Common Stock outstanding, or issuable, directly or indirectly, upon the conversion, exercise or exchange of any In the Money Securities directly or indirectly convertible into, or exercisable or exchangeable for, shares of Common Stock outstanding immediately prior to the issuance of New Securities giving rise to such participation right, each on an as-converted basis.

(c) Transfer or Assignment of Participation Right. The participation right set forth in this Section 4.8 with respect to any issuance of New Securities may be assigned or transferred (in whole, but not in part) by Purchaser to any Liberty Party to which it may make a Transfer pursuant to Section 4.2, by written notice of such assignment or transfer given within the ten business day period for the exercise of such participation right.

(d) As used in this Section 4.8, New Securities" means any Equity Securities of the Company, whether now authorized or not, and rights, options or warrants to purchase Equity Securities of the Company; *provided, however,* that the term "New Securities" does not include any of the following: (i) securities (including options or warrants) issued to employees, consultants, officers or directors of the Company or any of its Subsidiaries pursuant to any stock option, stock purchase or stock bonus plan or other award, agreement or arrangement; provided that the same are approved by the Board of Directors or compensation committee; (ii) securities issued in a public offering pursuant to a registration under the Securities Act; (iii) securities

issued pursuant to any stock split, stock dividend or recapitalization of the Company or any other issuance that gives rise to an adjustment to the Conversion Rate (as defined in the Preferred Stock Certificates of Designations) applicable to the Series B-1 Preferred Stock or Series B-2 Preferred Stock or to the issuance of such securities to the holders of Series B-1 Preferred Stock and/or Series B-2 Preferred Stock; (iv) securities issued pursuant to the conversion, exercise or exchange of securities outstanding on the date of this Agreement; (v) securities issued to persons exercising their participation rights under this Section 4.8; and (vi) in the case of any right, option, warrant or other securities convertible into, or exercisable or exchangeable for, any other securities that are excluded from the definition of New Securities pursuant to clauses (i) through (v) above, any other securities issued upon the exercise, exchange or conversion of any such right, option, warrant or other convertible, exchangeable or exercisable security.

4.9 Election of Directors. Without the prior written approval of the Independent Common Directors, prior to the first to occur of (i) the third anniversary of the Closing, and (ii) such time as Purchaser and the other Liberty Parties, in the aggregate, Beneficially Own a majority of the voting capital stock of the Company, provided that such majority ownership position was not acquired in violation of this Agreement:

(a) Purchaser and each Liberty Party shall vote, or cause to be voted, or execute written consents with respect to, any shares of Common Stock that it Beneficially Owns (and which are entitled to vote on such matter) in favor of the election of each candidate designated, recommended or nominated for election by the Nominating and Corporate Governance Committee of the Board of Directors; and

(b) Other than with respect to the right to designate the Preferred Stock Directors, neither Purchaser nor any Liberty Party shall (i) nominate or designate, (ii) vote for, or (iii) make, or in any way participate, directly or indirectly, in, any "solicitation" of "proxies" to vote (as such terms are used in the rules of the SEC) or seek to advise or influence any person with respect to the voting of, any voting securities in respect of the election of, any candidate for election or appointment as a director except as provided in this Section 4.9;

provided that this Section 4.9 shall not be deemed to restrict the Preferred Stock Directors from participating as members of the Board of Directors and any committees thereof in their capacity as such.

ARTICLE V

MISCELLANEOUS

5.1 Survival. The representations and warranties of the parties contained in this Agreement or any other agreement, exhibit, schedule, certificate, instrument or writing delivered in connection with this Agreement shall survive until the first anniversary of the Closing, except that Sections 2.1(e) and 2.1(f) shall survive indefinitely. All of the covenants or other agreements of the parties contained in this Agreement shall survive until fully performed or fulfilled, unless and to the extent only that non-compliance with such covenants or agreements is waived in writing by the party entitled to such performance.

5.2 Expenses. Each of the parties will bear and pay all other costs and expenses incurred by it or on its behalf in connection with the transactions contemplated pursuant to this Agreement.

5.3 Amendment; Waiver. No amendment or waiver of any provision of this Agreement will be effective with respect to any party unless made in writing and signed by an officer of a duly authorized representative of such party. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The conditions to each party's obligation to consummate the Closing are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law. No waiver of any party to this Agreement, as the case may be, will be effective unless it is in a writing signed by a duly authorized officer of the waiving party that makes express reference to the provision or provisions subject to such waiver. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

5.4 Counterparts. For the convenience of the parties hereto, this Agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Executed signature pages to this Agreement may be delivered by facsimile or other means of electronic transmission and such facsimiles or other means of electronic transmission will be deemed as sufficient as if actual signature pages had been delivered.

5.5 Governing Law. **This Agreement will be governed by and construed in accordance with the laws of the State of New York (except to the extent that mandatory provisions of Delaware law are applicable).** The parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, State of New York for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby.

5.6 WAIVER OF JURY TRIAL. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

5.7 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally or by telecopy or facsimile, upon confirmation of receipt, (b) on the first business day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the third business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

(a) If to Purchaser:

Liberty Radio, LLC
c/o Liberty Media Corporation
12300 Liberty Boulevard
Attn: General Counsel
Fax: (720) 875-5382

with a copy to (which copy alone shall not constitute notice):

Baker Botts L.L.P.
30 Rockefeller Plaza
New York, New York 10112
Attn: Marc A. Leaf and Frederick H. McGrath
Fax: (212) 408-2501

(b) If to the Company:

Sirius XM Radio Inc.
1221 Avenue of the Americas
New York, New York 10020
Attn: Patrick L. Donnelly, Esq.
Telephone: (212) 584-5180
Fax: (212) 584-5353

with a copy to (which copy alone shall not constitute notice):

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attn: Gary L. Sellers, Esq.
Telephone: (212) 455-2695
Fax: (212) 455-2502

5.8 Entire Agreement. This Agreement (including the Exhibits hereto) constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter hereof; and this Agreement will not be assignable except as expressly provided herein (any attempted assignment in contravention hereof being null and void), and except that this Agreement may be assigned by Purchaser to any Liberty Party that executes and delivers to the Company a written agreement to be bound by, and entitled to the benefits of, this Agreement, and upon any such assignment and assumption, all references in this Agreement to Purchaser shall be deemed to refer to such Liberty Party.

5.9 Interpretation; Other Definitions. Wherever required by the context of this Agreement, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa, and references to any agreement, document or instrument shall be deemed to refer to such agreement, document or instrument as

amended, supplemented or modified from time to time. All article, section, paragraph or clause references not attributed to a particular document shall be references to such parts of this Agreement, and all exhibit, annex and schedule references not attributed to a particular document shall be references to such exhibits, annexes and schedules to this Agreement. In addition, the following terms are ascribed the following meanings:

(a) "Affiliate" means, with respect to any person, any person directly or indirectly controlling, controlled by or under common control with, such other person. For purposes of this definition, (i) "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") when used with respect to any person, means the possession, directly or indirectly, of the power to cause the direction of management or policies of such person, whether through the ownership of voting securities, by contract or otherwise, (ii) natural persons shall not be deemed to be Affiliates of each other, (iii) the Company and its Subsidiaries shall not be deemed to be Affiliates of the Liberty Parties, and (iv) DirecTV and its Subsidiaries shall not be deemed to be Affiliates of Liberty Media Corporation and its Subsidiaries.

(b) the word "or" is not exclusive;

(c) the words "including," "includes," "included" and "include" are deemed to be followed by the words "without limitation";

(d) the terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision;

(e) "business day" means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the State of New York generally are authorized or required by law or other governmental action to close; and

(f) "person" has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

(g) "Beneficial Ownership" or "Beneficially Own" shall have the meaning given such term in Rule 13d-3 under the Exchange Act and a person's Beneficial Ownership of securities shall be calculated in accordance with the provisions of such Rule; provided, however, that for purposes of determining any person's Beneficial Ownership, such person shall be deemed to be the Beneficial Owner of any Equity Securities which may be acquired by such person, whether within 60 days or thereafter, upon the conversion, exchange, redemption or exercise of any warrants, options, rights or other securities issued by the Company or any subsidiary thereof. Notwithstanding anything to the contrary set forth herein, (x) (i) prior to the delivery to any counterparty of Equity Securities in final settlement of a Qualified Hedging Transaction and (ii) with respect to any Qualified Stock Lending Transactions until such time as the lending Liberty Party no longer has a right to the return of the securities lent thereunder, Liberty will be deemed to Beneficially Own all Equity Securities subject to such Qualified Hedging Transaction or Qualified Stock Lending Transaction and (y) prior to the pledgee commencing action to foreclose upon any Equity Securities pledged in any Qualified Pledge, any such pledged Equity Securities will be deemed Beneficially Owned by the pledging party.

(h) "Distributed Company" means, with respect to any Distribution Transaction, the person the equity interests of which are being distributed in such Distribution Transaction.

(i) "Distribution Transaction" involving any person that Beneficially Owns Equity Securities means any transaction pursuant to which the equity interests of (i) such person or (ii) any person that directly or indirectly owns a majority of the equity interests of such person are distributed (whether by redemption, dividend, share distribution, merger or otherwise) to all the holders of one or more classes or series of the common stock of the applicable Parent Company, which classes or series of common stock are registered under Section 12(b) or 12(g) of the Exchange Act (all the holders of one or more such classes or series, "Parent Company Holders"), on a pro rata basis with respect to each such class or series, or such equity interests of such person are available to be acquired by Parent Company Holders (including through any rights offering, exchange offer, exercise of subscription rights or other offer made available to Parent Company Holders), on a pro rata basis with respect to each such class or series, whether voluntary or involuntary.

(j) "DirecTV" means DirecTV Group Inc.

(k) "Equity Securities" means the equity securities of the Company, including shares of Common Stock, Preferred Stock and any other Company Preferred Stock.

(l) "In the Money Securities" means any securities or rights that are convertible into, or exercisable or exchangeable for, Common Stock at an exercise or conversion price per share of Common Stock that is less than the Closing Price on the NASDAQ on the day prior to the relevant date of determination.

(m) "Liberty" means Liberty Media Corporation, a Delaware corporation; provided that from and after the date of any Distribution Transaction involving any person that Beneficially Owns at least 50% of the Preferred Stock or Common Stock issued upon the conversion of Preferred Stock, and such person is a Qualified Distribution Transferee, the term "Liberty" will refer to the Distributed Company with respect to such Distribution Transaction.

(n) "Liberty Parties" means (v) Purchaser (w) Liberty, (x) DirecTV, (y) any Qualified Distribution Transferee, and (z) each Affiliate of Purchaser, Liberty, DirecTV, and/or any Qualified Distribution Transferee, until such time as such person is not an Affiliate of Purchaser, Liberty, DirecTV, and/or any Qualified Distribution Transferee.

(o) "Parent Company" means the publicly traded person that Beneficially Owns, through an unbroken chain of majority-owned subsidiaries, the person having record ownership of the Equity Securities. For purposes of this definition, the term "publicly traded" means that the Person in question (x) has a class or series of equity securities registered under Section 12(b) or 12(g) of the Exchange Act or (y) is required to file reports pursuant to Section 15(d) of the Exchange Act.

(p) "Qualified Distribution Transferee" means a person that meets the following conditions: (i) at the time of any transfer to it of Equity Securities, it is an Affiliate of Liberty, (ii) thereafter, by reason of a Distribution Transaction, it ceases to be an Affiliate of Liberty, and

(iii) prior to such transfer, it executes and delivers to the Company a written agreement to be bound by, and entitled to the benefits of, this Agreement, prospectively.

(q) "Qualified Hedging Transaction" means any transaction involving a Liberty Party, a Qualified Distribution Transferee or any Affiliate thereof whereby the counterparty engages in a (i) short sale, (ii) purchase, sale or grant of any right (including any put or call option), or (iii) forward sale (whether for a fixed or variable number of shares or at a fixed or variable price) of or with respect to, or any loan secured by, any Common Stock or any security (other than a broad-based market basket or index) that includes, relates to or derives any significant part of its value from any Common Stock, and such term includes (a) the pledge by any Liberty Party, a Qualified Distribution Transferee or any Affiliate thereof of any Equity Securities in connection with any of the foregoing to secure the obligations of the pledgor under a Qualified Hedging Transaction and (b) the pledge of a Qualified Hedging Transaction itself to secure any extension of credit to a party based, in whole or part, on the value thereof, provided in all cases that the counterparty to such transaction is a financial institution in the business of engaging in such transactions.

(r) "Qualified Pledge" means a pledge of Equity Securities in connection with a secured borrowing transaction and not otherwise within the meaning of the definition of Qualified Hedging Transaction, the pledgee with respect to which is a financial institution in the business of engaging in secured lending and similar transactions.

(s) "Qualified Stock Lending Transactions" means a transaction whereby the Liberty Parties and their Affiliates lend shares of Common Stock to a third party or permit a third party to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business, such shares of Common Stock, provided in all cases that the counterparty to such transaction is a financial institution in the business of engaging in such transactions.

(t) "Refinance" means, in respect of any indebtedness, to refinance, extend, renew, refund, repay, prepay, purchase, redeem, defease or retire, or to issue other indebtedness in exchange or replacement for, such indebtedness. The terms "Refinanced" and "Refinancing" shall have correlative meanings.

(u) "Transfer" by any person means directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any Equity Securities Beneficially Owned by such person or of any interest (including any voting interest) in any Equity Securities Beneficially Owned by such person; provided, however, that (i) no Transfer of Equity Securities shall be deemed to have occurred as a result of the entry into, modification of or existence of any Qualified Hedging Transaction unless and until such time as Common Stock is delivered upon settlement or termination of such Qualified Hedging Transaction, (ii) no Transfer of Equity Securities shall be deemed to have occurred as a result of the entry into, modification of or existence of any Qualified Stock Lending Transactions unless and until such time as the lending Liberty Party no longer has a right to the return of the securities lent thereunder, and (iii) no Transfer of Equity Securities shall be deemed to have

occurred as a result of the entry into, modification of or existence of any Qualified Pledge, unless and until to the pledgee commences action to foreclose upon such Equity Securities. For the avoidance of doubt, a transfer of control of the direct or indirect Beneficial Owner of Equity Securities is a Transfer of such Equity Securities for purposes of this Agreement.

(v) "XM Facility Amendments" means (a) the amendment of Existing XM Facilities (as such term is defined in the Phase II Credit Agreement) so as to extend the term of the Existing XM Facilities by at least one year, and permit XM Opco to incur $150,000,000 of senior secured indebtedness under the Phase II Credit Agreement, in each case in form and substance reasonably satisfactory to Liberty Media Corporation, as Administrative Agent under the Phase II Credit Facility. and (b) the purchase by Liberty Media, LLC or one or more Affiliates thereof of approximately $100,000,000 principal amount of loans under the Existing XM Facilities.

5.10 Captions. The article, section, paragraph and clause captions herein are for convenience of reference only, do not constitute part of this Agreement and will not be deemed to limit or otherwise affect any of the provisions hereof.

5.11 Severability. If any provision of this Agreement or the application thereof to any person (including the officers and directors the parties hereto) or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

5.12 No Third Party Beneficiaries. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person other than the parties hereto, any benefit right or remedies, except that the provisions of Section 4.7 shall inure to the benefit of the persons referred to in that Section.

5.13 Public Announcements. Subject to each party's disclosure obligations imposed by law or regulation or the rules of any stock exchange upon which its securities are listed, each of the parties hereto will cooperate with each other in the development and distribution of all news releases and other public information disclosures with respect to this Agreement and any of the transactions contemplated by this Agreement, and neither the Company nor Purchaser will make any such news release without first consulting with the other, and, in each case, also receiving the other's consent (which shall not be unreasonably withheld or delayed) and each party shall coordinate with the party whose consent is required with respect to any such news release or public disclosure.

5.14 Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement and the transactions contemplated hereby (including the funding of the Credit Agreements) were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, without the necessity of

posting bond or other undertaking, the parties shall be entitled to specific performance of the terms hereof, this being in addition to any other remedies to which they are entitled at law or equity, and in the event that any action or suit is brought in equity to enforce the provisions of this Agreement, no party will allege, and each party hereby waives the defense or counterclaim, that there is an adequate remedy at law.

5.15 Termination. This Agreement will survive the Closing so long as the Liberty Parties in the aggregate hold shares of Preferred Stock and/or Common Stock in an amount (on an as-converted basis) equal to not less than the number of shares of Common Stock issuable upon conversion of 6,250,000 shares of Preferred Stock (appropriately adjusted from time to time after the date hereof for stock splits, reverse stock splits, combinations, reclassifications and similar transactions, at which time this Agreement shall automatically terminate and be of no further force or effect, except that the registration rights in Section 4.7 shall survive any such termination in accordance with its terms. Prior to the Closing, this Agreement may only be terminated:

(a) by mutual written agreement of the Company and Purchaser;

(b) by the Company or Purchaser, upon written notice to the other parties given at any time on or after December 31, 2009, in the event that the Closing shall not have occurred on or before such date;

(c) by the Company as permitted by Section 4.6;

(d) without any action by either party, if

(1) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Company or any material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(2) the Company or any material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (1) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or (v) make a general assignment for the benefit of creditors.

In the event of any termination of this Agreement in accordance with this Section 5.15, neither party (or any of its Affiliates) shall have any liability or obligation to the other (or any of its Affiliates) under or in respect of this Agreement, except to the extent of (A) any liability arising from any breach by such party of its obligations of this Agreement arising prior to such termination, and (B) the Company's obligations under Section 4.7. (registration rights) which shall survive in accordance with its terms.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first herein above written.

SIRIUS XM RADIO INC.

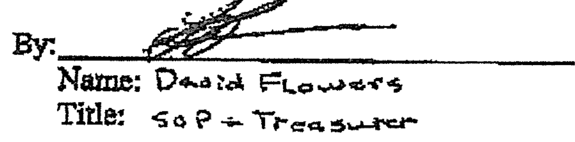
By: ______________________

Name: Patrick Donnelly

Title: Executive Vice President, General Counsel and Secretary

[Signature Page to Investment Agreement]

LIBERTY RADIO, LLC



By:____________________________

Name: David Flowers

Title: SVP + Treasurer

EXHIBIT C

Form of DGCL Section 203 Resolution

"RESOLVED, that each of the Liberty Parties (as defined in the Investment Agreement) and any "affiliates" or "associates" thereof (as defined in and contemplated by Section 203(c)(1) and Section 203(c)(2) of the General Corporation Law of the State of Delaware ("GCL")), including persons who become "affiliates" or "associates" of the Liberty Parties after the date hereof, any group composed of any of the Liberty Parties and any "affiliates" or "associates" thereof, and any Qualified Distribution Transferee (as defined in the Investment Agreement) and the "affiliates" and "associates" thereof (collectively, the "Exempt Persons"), be and hereby are approved as an "interested stockholder" within the meaning of Section 203 of the GCL and that any acquisition of "ownership" of "voting stock" (as defined in and contemplated by Section 203(c)(8) and Section 203(c)(9) of the GCL) of Sirius XM Radio, Inc. (or any successor thereto) by any of the Exempt Persons, either individually or as a group, as any such acquisition may occur from time to time (including in circumstances where a Liberty Party or "affiliate" or "associate" thereof ceases to be an Affiliate (as defined in the Investment Agreement) of Liberty, so long as such person meets the requirements to be a Qualified Distribution Transferee or an Affiliate thereof), be and hereby are approved for purposes of Section 203 of the GCL, and the restrictions on "business combinations" contained in Section 203 of the GCL shall not apply to any of the Exempt Persons."

Delaware

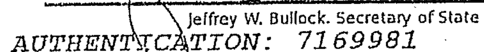
The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "SIRIUS XM RADIO INC.", FILED IN THIS OFFICE ON THE FIFTH DAY OF MARCH, A.D. 2009, AT 2:19 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

2230857 8100

090240532



Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 7169981

DATE: 03-05-09

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:19 PM 03/05/2009
FILED 02:19 PM 03/05/2009
SRV 090240532 - 2230857 FILE

CERTIFICATE OF DESIGNATIONS

OF

CONVERTIBLE PERPETUAL PREFERRED STOCK, SERIES B-1

OF

Sirius XM Radio Inc.

Pursuant to Section 151 of the
General Corporation Law
of the State of Delaware

Sirius XM Radio Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Company"), in accordance with the provisions of Sections 103 and 151 thereof, DOES HEREBY CERTIFY:

FIRST: The Amended and Restated Certificate of Incorporation of the Company authorizes the issuance of 50,000,000 shares of preferred stock, par value $0.001 per share, of the Company ("Preferred Stock") in one or more series, and expressly authorizes the Board of Directors to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock, and, with respect to each such series, to fix by resolution or resolutions the number of shares constituting and the designation of each series of Preferred Stock, the voting powers (if any) of the shares of such series, and the preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof.

SECOND: The Board of Directors, in accordance with the provisions of the Amended and Restated Certificate of Incorporation, as amended, the Amended and Restated By-laws of the Company and applicable law, adopted the following resolution on February 15, 2009, providing for the issuance of a series of 12,500,000 shares of Preferred Stock of the Company designated as "Convertible Perpetual Preferred Stock, Series B-1".

RESOLVED, that pursuant to the provisions of the Amended and Restated Certificate of Incorporation, the Amended and Restated By-laws of the Company and applicable law, a series of Preferred Stock, par value $0.001 per share, of the Company be and hereby is created, and that the number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

RIGHTS AND PREFERENCES

Section 1. Designation. There is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as the "Convertible Perpetual Preferred Stock, Series B-1" (the "Series B-1 Preferred Stock"). The number of shares constituting such series shall be 12,500,000; provided that the Company may decrease such number from time to time, (but not below a number equal to the sum of the number of shares of Series B-1 Preferred Stock then outstanding plus the number of shares of Series B-2 Preferred Stock (as defined below) then outstanding) by an amount equal to the number of shares of Series B-2 Preferred Stock which are converted into Common Stock pursuant to the Series B-2 Preferred Stock Certificate of Designations. Other than shares issued (x) pursuant to the Investment Agreement, (y) upon conversion of any outstanding shares of Series B-2 Preferred Stock issued pursuant to the Investment Agreement, or (z) in connection with a stock split, dividend or distribution payable only to Holders of Series B-1 Preferred Stock in respect of existing shares of Series B-1 Preferred Stock, so long as any shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock are issued and outstanding, the Company shall not issue, or enter into any agreement to issue, any shares of Series B-1 Preferred Stock, or increase the authorized number of shares of Series B-1 Preferred Stock, without the prior written consent or affirmative vote of the Holders of at least 75% of the then outstanding shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a separate class.

Section 2. Ranking. (a) The Series B-1 Preferred Stock will rank, with respect to dividend rights, on a parity with the Company's series of preferred stock designated as the "Convertible Perpetual Non-Voting Preferred Stock, Series B-2" (the "Series B-2 Preferred Stock"), the Company's common stock, par value $0.001 per share (the "Common Stock"), the Series A Convertible Preferred Stock, each other class or series of capital stock of the Company the terms of which expressly provide that such class or series will rank on a parity with the Series B-1 Preferred Stock as to dividend rights and each other class or series of capital stock the terms of which do not expressly provide that it ranks senior to or junior to the Series B-1 Preferred Stock as to dividend rights (provided that any such other class or series of capital stock is authorized in accordance with the terms of Section 12 of this Certificate of Designations, to the extent Section 12 remains applicable at the time such class or series of capital stock is authorized).

(b) The Series B-1 Preferred Stock will rank, with respect to rights on liquidation, winding-up and dissolution, (i) on a parity with the Series B-2 Preferred Stock and each other class or series of capital stock of the Company the terms of which expressly provide that such class or series will rank on a parity with the Series B-1 Preferred Stock as to rights on liquidation, winding-up and dissolution of the Company (provided that any such other class or series of capital stock is authorized in accordance with the terms of Section 12 of this Certificate of Designations, to the extent Section 12 remains applicable at the time such class or series of capital stock is authorized) and

(ii) senior to the Common Stock, and the Series A Convertible Preferred Stock and each other class or series of capital stock the terms of which do not expressly provide that it ranks on a parity with or senior to the Series B-1 Preferred Stock as to rights on liquidation, winding-up and dissolution of the Company (provided that any such other class or series of capital stock is authorized in accordance with the terms of Section 12 of this Certificate of Designations, to the extent Section 12 remains applicable at the time such class or series of capital stock is authorized).

(c) The Series B-2 Preferred Stock and each other class or series of capital stock of the Company the terms of which expressly provide that such class or series will rank on a parity with the Series B-1 Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (provided that any such other class or series of capital stock is authorized in accordance with the terms of Section 12 of this Certificate of Designations, to the extent Section 12 remains applicable at the time such class or series of capital stock is authorized) are herein referred to as "Parity Securities."

Section 3. Definitions. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:

"Adjustment Event" has the meaning set forth in Section 17(e).

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, (i) "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing, (ii) natural persons shall not be deemed to be Affiliates of each other, (iii) the Company and its Subsidiaries shall not be deemed to be Affiliates of the Liberty Parties (as defined in the Investment Agreement), and (iv) the DirecTV Group, Inc. ("DirecTV") and its Subsidiaries shall not be deemed to be Affiliates of Liberty Media Corporation and its Subsidiaries.

"Board of Directors" means the board of directors of the Company or any committee thereof duly authorized to act in the relevant matter on behalf of such board of directors.

"Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York are generally required or authorized by law to be closed.

"Certificate of Designations" means this Certificate of Designations of Sirius XM Radio Inc., dated March 5, 2009.

"<u>Certificate of Incorporation</u>" means the Amended and Restated Certificate of Incorporation of the Company, as amended.

"<u>Close of Business</u>" means (i) with respect to the Record Date for any issuance, dividend, or distribution declared, paid or made on or with respect to any capital stock of the Company, the closing of the Company's stock register on such date, for the purpose of determining the holders of capital stock entitled to receive such issuance, dividend or distribution, and (ii) in all other cases, 6:00 pm, New York City time, on the date in question.

"<u>Closing Price</u>" of the Common Stock (or other relevant capital stock or equity interest) on any date of determination means the closing sale price on such date or, if no closing sale price is reported, the last reported sale price of the shares of the Common Stock (or other relevant capital stock or equity interest) on The NASDAQ Global Select Market. If the Common Stock (or other relevant capital stock or equity interest) is not traded on The NASDAQ Global Select Market on any date of determination, the Closing Price of the Common Stock (or other relevant capital stock or equity interest) on such date of determination means the closing sale price on such date as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or other relevant capital stock or equity interest) is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national or regional securities exchange on which the Common Stock (or other relevant capital stock or equity interest) is so listed or quoted, or if the Common Stock (or other relevant capital stock or equity interest) is not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price on such date for the Common Stock (or other relevant capital stock or equity interest) in the over-the-counter market as reported by Pink Sheets LLC or similar organization, or, if that bid price is not available, the market price of the Common Stock (or other relevant capital stock or equity interest) on that date as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose.

For purposes of this Certificate of Designations, all references herein to the "<u>Closing Price</u>" and "<u>last reported sale price</u>" of the Common Stock (or other relevant capital stock or equity interest) on The NASDAQ Global Select Market shall be such closing sale price and last reported sale price as reflected on the website of The NASDAQ Global Select Market (http://www.nasdaq.com) and as reported by Bloomberg Professional Service; *provided* that in the event that there is a discrepancy between the closing sale price or last reported sale price as reflected on the website of The NASDAQ Global Select Market and as reported by Bloomberg Professional Service, the closing sale price and last reported sale price on the website of The NASDAQ Global Select Market shall govern.

"<u>Committee Rights</u>" has the meaning set forth in Section 11(f).

"<u>Common Stock</u>" has the meaning set forth in Section 2(a).

"Common Stock Outstanding" has the meaning set forth in Section 9(a).

"Company" means Sirius XM Radio Inc., a Delaware corporation.

"Conversion Date" has the meaning set forth in Section 7.

"Conversion Rate" means 206.9581409 shares of Common Stock per share of Series B-1 Preferred Stock, subject to adjustment in accordance with the provisions of this Certificate of Designation.

"Current Market Price" means, in the case of any distribution of rights, warrants or Distributed Property giving rise to an adjustment to the Conversion Price pursuant to Section 9(c) or Section 9(d), the average of the daily Closing Price per share of the Common Stock or other securities, as applicable, on each of the five consecutive Trading Days ending on and including the third Trading Day preceding the Record Date for such distribution.

"Distributed Property" has the meaning set forth in Section 9(d).

"Exchange Property" has the meaning set forth in Section 10(a).

"Holder" means the Person in whose name the shares of the Series B-1 Preferred Stock are registered, which may be treated by the Company and the Company's transfer agent and registrar as the absolute owner of the shares of Series B-1 Preferred Stock for the purpose of making payment and settling the related conversions and for all other purposes.

"Independent Director" means a natural person who, at the time he or she stands for election to the Board of Directors, meets all of the requirements of the definition of an "independent director" under the NASDAQ Marketplace Rules.

"Investment Agreement" means the Investment Agreement, dated as of February 17, 2009, between the Company and Liberty Radio, LLC, a Delaware limited liability company, as amended.

"Issue Date" means the date upon which any shares of Series B-1 Preferred Stock are first issued.

"Liquidation Preference" means, as to the Series B-1 Preferred Stock, $0.001 per share (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series B-1 Preferred Stock).

"Parity Securities" has the meaning set forth in Section 2(c). For the avoidance of doubt, the term "Parity Securities" does not mean or include the Common Stock.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.

"Preferred Stock" has the meaning set forth in the recitals.

"Record Date" means, with respect to any issuance, dividend, or distribution declared, paid or made on or with respect to any capital stock of the Company, the date fixed for the determination of the stockholders entitled to receive such issuance, dividend or distribution.

"Reorganization Event" has the meaning set forth in Section 10(a).

"Series A Preferred Stock" means the shares of the Company's Series A Convertible Preferred Stock.

"Series B-1 Directors" has the meaning set forth in Section 11(b).

"Series B-1 Preferred Stock" has the meaning set forth in Section 1.

"Series B-2 Preferred Stock" has the meaning set forth in Section 2.

"Trading Day" means a day on which the shares of Common Stock:

(i) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the Close of Business; and

(ii) have traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock.

"Transfer" means a transfer, directly or indirectly, of beneficial ownership of shares of Series B-1 Preferred Stock by the Holder thereof to any Person. For the avoidance of doubt, as used herein the term Transfer does not include a Qualified Hedging Transaction, a Qualified Pledge, or a Qualified Stock Lending Transaction, as such terms are defined in the Investment Agreement.

"Trigger Event" has the meaning set forth in Section 9(g).

"Washington D.C. Property" means the properties located at 1500 Eckington Place NE, Washington D.C. 20002 and 60 Florida Avenue NE, NE, Washington D.C. 20002.

Section 4. Dividends. (a) From and after the Issue Date, Holders shall be entitled to receive, when, as and if declared by the Board of Directors, out of any funds

legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(b), and no more.

(b) If the Board of Directors declares and pays a cash dividend in respect of Common Stock or any other dividend or distribution in respect of Common Stock for which no adjustment in the Conversion Rate is required to be made pursuant to Section 9 or Section 10 (other than a distribution of rights issued pursuant to a stockholders' rights plan (in which event the provisions of Section 9(g) shall apply), including without limitation any dividend or distribution declared before and paid after the Issue Date, then the Board of Directors shall declare and pay to the Holders of the Series B-1 Preferred Stock, on the same dates on which such cash dividend (or other dividend or distribution) is declared or paid, as applicable, on the Common Stock, a dividend or distribution in the same form and in an amount per share of Series B-1 Preferred Stock equal to the product of (i) the per share dividend or distribution declared and paid in respect of each share of Common Stock and (ii) the number of shares of Common Stock into which such share of Series B-1 Preferred Stock is then convertible; provided, however, that to the extent that the Company declares a dividend on the Series B-1 Preferred Stock and any class or series of capital stock that ranks on parity with the Series B-1 Preferred Stock with respect to dividend rights but does not make the full payment of such declared dividends, the Company shall allocate the dividend payments on a pro rata basis among the Holders of the Series B-1 Preferred Stock and the holders of any class or series of capital stock that ranks on parity with the Series B-1 Preferred Stock with respect to dividend rights.

(c) Each dividend will be payable to Holders of record as they appear in the records of the Company at the Close of Business on the Record Date therefor, which shall be the same day as the Record Date for the payment of the corresponding dividend to the holders of shares of Common Stock.

(d) Dividends on the Series B-1 Preferred Stock are non-cumulative. Declared and unpaid dividends shall bear no interest (except to the extent of any interest on such dividends payable in respect of the Common Stock).

Section 5. Liquidation. (a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, Holders of Series B-1 Preferred Stock shall be entitled to receive out of the assets of the Company or proceeds thereof legally available for distribution to stockholders of the Company, after satisfaction of all liabilities, if any, to creditors of the Company and subject to Section 5(b) and to the rights of holders of any shares of capital stock of the Company then outstanding ranking senior to the Series B-1 Preferred Stock in respect of distributions upon liquidation, dissolution or winding up of the Company, and before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other classes or series of capital stock of the Company ranking junior to the Series B-1 Preferred Stock as to such distribution, a liquidating distribution in an amount equal to (i) the Liquidation Preference per share, together with an amount equal to all dividends, if any, that have been declared but not paid on the shares of Series B-1 Preferred Stock

prior to the date of payment of such distribution (but without any accumulation in respect of dividends that have not been declared prior to such payment date) plus (ii) the amount of the liquidating distributions, as determined by the Company (or the trustee or other Person or Persons administering the liquidation, dissolution or winding-up of the Company in accordance with applicable law) as of a date that is at least 10 Business Days before the first liquidating distribution is made on Series B-1 Preferred Stock, that would be made on the number of shares of Common Stock into which such shares of Series B-1 Preferred Stock are then convertible on such date of determination and after any liquidating distribution having been made on shares of Series B-1 Preferred Stock, as adjusted for any actions between such date of determination and the liquidation date as would require a change in the Conversion Rate hereunder.

(b) In the event the assets of the Company available for distribution to stockholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series B-1 Preferred Stock and the corresponding amounts payable on any Parity Securities, Holders and the holders of such Parity Securities shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.

(c) The Company's consolidation or merger with or into any other entity, the consolidation or merger of any other entity with or into the Company, or the sale of all or substantially all of the Company's property or business or other assets will not constitute its liquidation, dissolution or winding up.

Section 6. Maturity. The Series B-1 Preferred Stock shall be perpetual unless converted in accordance with this Certificate of Designations.

Section 7. Conversion. Each share of Series B-1 Preferred Stock shall be convertible, at the option of the Holder thereof, at any time, and from time to time, into the number of duly authorized, validly issued, fully paid and nonassessable shares of Common Stock equal to the Conversion Rate in effect at the time of conversion (subject to aggregation and the payment of cash in lieu of fractional shares as provided in Section 13 of this Certificate of Designations). In order to convert shares of Series B-1 Preferred Stock into shares of Common Stock, the Holder must surrender the certificates representing such shares of Series B-1 Preferred Stock, accompanied by transfer instruments reasonably satisfactory to the Company, at the principal office of the Company (or such other place mutually acceptable to the Holder and the Company), together with written notice that such Holder elects to convert all or such number of shares represented by such certificates as specified therein. With respect to a conversion pursuant to this Section 7, the date of receipt of such certificates, together with such notice, by the Company or its authorized agent will be the date of conversion (the "Conversion Date"). In the event that a Holder Transfers shares of Series B-1 Preferred Stock, other than in connection with a Transfer permitted by and in accordance with the terms of Section 4.2(b)(1) or (2) of the Investment Agreement, such shares of Series B-1

Preferred Stock so Transferred shall be automatically converted into shares of Common Stock at the Conversion Rate then in effect immediately prior to such Transfer by a Holder (in which case the date of such Transfer shall be deemed to be the Conversion Date).

Section 8. Conversion Procedures. (a) On the Conversion Date with respect to any share of Series B-1 Preferred Stock, certificates representing shares of Common Stock shall be promptly issued and delivered to the Holder thereof or such Holder's designee upon presentation and surrender of the certificate evidencing the Series B-1 Preferred Stock to the Company and, if required, the furnishing of appropriate endorsements and transfer documents and the payment of all transfer and similar taxes.

(b) From and after the Conversion Date, the shares of Series B-1 Preferred Stock to be converted on such Conversion Date will cease to be entitled to any dividends that may thereafter be declared on the Series B-1 Preferred Stock; said shares of Series B-1 Preferred Stock will no longer be deemed to be outstanding for any purpose; and all rights (except the right to receive from the Company the Common Stock upon conversion thereof and any dividends previously declared on the Series B-1 Preferred Stock but not paid) of the Holder of such shares of Series B-1 Preferred Stock to be converted shall cease and terminate with respect to such shares. Prior to the Conversion Date, except as otherwise provided herein, Holders shall have no rights as owners of the Common Stock (or other relevant capital stock or equity interest into which the Series B-1 Preferred Stock may then be convertible in accordance herewith) (including voting powers, and rights to receive any dividends or other distributions on the Common Stock or other securities issuable upon conversion) by virtue of holding shares of Series B-1 Preferred Stock.

(c) Shares of Series B-1 Preferred Stock duly converted in accordance with this Certificate of Designations, or otherwise reacquired by the Company, will resume the status of authorized and unissued shares of Preferred Stock, undesignated as to series, and will be available for future issuance, but shall not be reissued as shares of Series B-1 Preferred Stock. The Company may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series B-1 Preferred Stock, but not below the aggregate number of shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock then outstanding.

(d) The Person or Persons entitled to receive the Common Stock and/or cash, securities or other property issuable upon conversion of Series B-1 Preferred Stock shall be treated for all purposes as the record holder(s) of such shares of Common Stock and/or securities as of the Close of Business on the Conversion Date with respect thereto. In the event that a Holder shall not by written notice designate the name in which shares of Common Stock and/or cash, securities or other property (including payments of cash in lieu of fractional shares) to be issued or paid upon conversion of shares of Series B-1 Preferred Stock should be registered or paid or the manner in which such shares should be delivered, the Company shall be entitled to register and deliver

such shares, and make such payment, in the name of the Holder and in the manner shown on the records of the Company.

Section 9. Anti-Dilution Adjustments. (a) The Conversion Rate shall be subject to adjustment from time to time in accordance with this Section 9. The term "Common Stock Outstanding" at any given time shall mean the number of shares of Common Stock issued and outstanding at such time.

(b) If the Company, at any time or from time to time while any of the Series B-1 Preferred Stock is outstanding, shall (1) pay a dividend or make a distribution on its outstanding shares of Common Stock in shares of its Commom Stock, (2) subdivide the then outstanding shares of Common Stock into a greater number of shares of Common Stock, or (3) combine the then outstanding shares of Common Stock into a smaller number of shares of Common Stock (other than a dividend, distribution, subdivision or combination in connection with a transaction to which Section 10 applies), then the Conversion Rate in effect at the Close of Business on the Record Date for such dividend or distribution, or immediately preceding the effective time and date of such subdivision or combination shall be adjusted, effective at such time, so that the holder of each share of the Series B-1 Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number and kind of shares of capital stock of the Company that such holder would have owned or been entitled to receive immediately following such action had such shares of Series B-1 Preferred Stock been converted immediately prior to such time.

If any dividend or distribution that is the subject of this Section 9(b) is declared but not so paid or made, the Conversion Rate shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay or make such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. The Company will not pay any dividend or make any distribution on shares of Common Stock held in treasury, if any.

(c) If the Company, at any time or from time to time while any of the Series B-1 Preferred Stock is outstanding, distributes to holders of all or substantially all of the Common Stock any rights or warrants (other than a distribution of rights issued pursuant to a stockholders' rights plan, to the extent such rights are attached to shares of Common Stock (in which event the provisions of Section 9(g) shall apply), a dividend reinvestment plan or an issuance in connection with a transaction in which Section 10 applies) entitling them (for a period of not more than 60 calendar days from the issuance date of such distribution) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price of the Common Stock on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Rate shall be adjusted, effective as of the Close of Business on such Record Date for such distribution, based on the following formula:

$$CR' = CR_0 \quad X \quad \underline{OS_0 + X}$$

$$OS_0 + Y$$

where

CR_0	=	the Conversion Rate in effect at the Close of Business on the Record Date for such distribution;
CR'	=	the Conversion Rate in effect immediately following the Close of Business on the Record Date for such distribution;
OS_0	=	the number of shares of Common Stock Outstanding at the Close of Business on the Record Date for such issuance;
X	=	the total number of shares of Common Stock issuable pursuant to such rights or warrants; and
Y	=	the number of shares of Common Stock equal to (x) the aggregate price payable to exercise such rights or warrants divided by (y) the Current Market Price of the Common Stock.

In the event that such rights or warrants described in this Section 9(c) are not so issued, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors publicly announces its decision not to issue such rights or warrants, to the Conversion Rate that would then be in effect if such issuance had not been declared. To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants upon the expiration or termination of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the distribution of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In determining the aggregate price payable to exercise such rights or warrants, there shall be taken into account any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors.

For purposes of this Section 9(c), the number of shares of Common Stock Outstanding at the Close of Business on the Record Date for such issuance shall not include shares of Common Stock held in treasury, if any. The Company will not issue any such rights or warrants in respect of shares of Common Stock held in treasury, if any. If an adjustment to the Conversion Rate may be required pursuant to this Section 9(c), delivery of any additional shares of Common Stock that may be deliverable upon conversion as a result of an adjustment required pursuant to this Section 9(c) shall be delayed to the extent necessary in order to complete the calculations provided for in this Section 9(c).

(d) If the Company, at any time or from time to time while any of the Series B-1 Preferred Stock is outstanding, shall, by dividend or otherwise, distribute to holders of all or substantially all of the Common Stock shares of any class of capital stock of the Company, evidences of its indebtedness, assets, property or rights or warrants to acquire the Company's capital stock or other securities, but excluding:

(i) any dividends or distributions as to which an adjustment under another subsection of Section 9 shall apply;

(ii) any dividends or distributions in which the Holders of the Series B-1 Preferred Stock share on an as-converted basis in accordance with Section 4(b);

(iii) any dividends or distributions in connection with a transaction to which Section 10 applies; and

(iv) any Spin-Offs to which the provision set forth below in this Section 9(d) shall apply

(any such shares of capital stock, indebtedness, assets, property or rights or warrants to acquire Common Stock or other securities, hereinafter in this Section 9(d) called the "Distributed Property"), then, in each such case the Conversion Rate shall be adjusted effective as of the Close of Business on the Record Date for such distribution, based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

CR_0 = the Conversion Rate in effect at the Close of Business on the

Record Date for such distribution;

CR' = the Conversion Rate in effect immediately following the Close of Business, on the Record Date for such distribution;

SP_0 = the Current Market Price of the Common Stock; and

FMV = the fair market value (as determined by the Board of Directors or a duly authorized committee thereof) on the Record Date for such distribution of the Distributed Property applicable to one share of Common Stock.

Notwithstanding the foregoing, where there has been a payment of a dividend or other distribution on the Common Stock consisting of shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (a "Spin-Off") that are, or when issued will be, traded or listed on the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other U.S. national securities exchange or association, the Conversion Rate shall be adjusted, effective as of the Close of Business on the Trading Day immediately preceding the effective date of the Spin-Off, based on the following formula:

$$CR' = CR_0 \times \frac{(FMV + MP_0)}{MP_0}$$

where

CR_0 = the Conversion Rate in effect at the Close of Business on the Trading Day immediately preceding the effective date of the Spin-Off;

CR' = the Conversion Rate in effect immediately following the Close of Business on the Trading Day immediately preceding the effective date of the Spin-Off;

FMV = the average of the Closing Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Day period beginning on, and including, the effective date of the Spin-Off; and

MP_0 = the average of the Closing Prices of the Common Stock over the 10 consecutive Trading Day period beginning on, and including, the effective date of the Spin-Off.

If any dividend or distribution of the type described in this Section 9(d) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If an adjustment to the Conversion Rate is required under this Section 9(d), delivery of any additional shares of Common Stock that may be deliverable upon conversion as a result of an adjustment required under this Section 9(d) shall be delayed to the extent necessary in order to complete the calculations provided for in this Section 9(d).

(e) (i) All calculations under this Section 9 shall be made to the nearest 1/100,000 of a share of Common Stock per share of Preferred Stock. No adjustment in the Conversion Rate is required if the amount of such adjustment would be less than 1%; provided, however, that any such adjustment not required to be made pursuant to this Section 9(e)(i) will be carried forward and taken into account in any subsequent adjustment.

(ii) No adjustment to the Conversion Rate shall be made if Holders may participate in the transaction that would otherwise give rise to an adjustment, as a result of holding the Series B-1 Preferred Stock (including without limitation pursuant to Section 4(b) hereof), without having to convert the Series B-1 Preferred Stock, as if they held the full number of shares of Common Stock into which a share of the Series B-1 Preferred Stock may then be converted.

(iii) Notwithstanding the foregoing, the Conversion Rate shall not be adjusted:

(A) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of

additional optional amounts in shares of Common Stock under any such plan;

(B) subject to the Company's compliance with the applicable terms of the Investment Agreement, upon the issuance of any shares of Common Stock or rights or warrants to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its subsidiaries;

(C) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date shares of the Series B-1 Preferred Stock were first issued;

(D) for a change in the par value of Common Stock; or

(E) for accrued and unpaid dividends on the Series B-1 Preferred Stock.

(f) Whenever the Conversion Rate is to be adjusted in accordance with Section 9, the Company shall: (i) compute the Conversion Rate in accordance with Section 9, taking into account Section 9(e)(i) hereof; (ii) as soon as practicable following the occurrence of an event that requires an adjustment to the Conversion Rate pursuant to Section 9, taking into account Section 9(e)(i) (or if the Company is not aware of such occurrence, as soon as practicable after becoming so aware), provide, or cause to be provided, a written notice to the Holders of the occurrence of such event; and (iii) as soon as practicable following the determination of the revised Conversion Rate in accordance with Section 9 hereof, provide, or cause to be provided, a written notice to the Holders setting forth in reasonable detail the method by which the adjustment to the Conversion Rate was determined and setting forth the revised Conversion Rate.

(g) Rights Plans. If the Company has a rights plan in effect with respect to the Common Stock on the Conversion Date, upon conversion of any shares of the Series B-1 Preferred Stock, Holders of such shares will receive, in addition to the shares of Common Stock, the rights under the rights plan relating to such Common Stock, unless, prior to the Conversion Date, the rights have (i) become exercisable or (ii) separated from the shares of Common Stock (the first of events to occur being the "Trigger Event"), in either of which cases the Conversion Rate will be adjusted, effective automatically at the time of such Trigger Event, as if the Company had made a distribution of such rights to all holders of the Common Stock as described in Section 9(c) (without giving effect to the 60 day limit on the exercisability of rights and warrants ordinarily subject to such Section 9(c)), subject to appropriate readjustment in the event of the expiration, termination or redemption of such rights prior to the exercise, deemed exercise or exchange thereof. Notwithstanding the foregoing, to the extent any such stockholder rights are exchanged by the Company for shares of Common Stock, the Conversion Rate shall be appropriately readjusted as if such stockholder rights had not

been issued, but the Company had instead issued the shares of Common Stock issued upon such exchange as a dividend or distribution of shares of Common Stock subject to Section 9(b).

Section 10. Reorganization Events. (a) In the event that there occurs:

(i) any consolidation, merger or other similar business combination of the Company with or into another Person, in each case pursuant to which the Common Stock will be converted into cash, securities or other property of the Company or another Person;

(ii) any sale, transfer, lease or conveyance to another Person of all or substantially all of the property and assets of the Company;

(iii) any reclassification, recapitalization, or reorganization of the Common Stock into securities including securities other than the Common Stock; or

(iv) any statutory exchange of the outstanding shares of Common Stock for securities of another Person (other than in connection with a consolidation, merger or other business combination);

(any such event specified in this Section 10(a), a "Reorganization Event"); each share of Series B-1 Preferred Stock outstanding immediately prior to such Reorganization Event shall, without the consent of the Holders thereof and subject to Section 10(e), remain outstanding but shall become convertible, at the option of the Holders into the kind of securities, cash and other property receivable in such Reorganization Event by a holder (other than the counterparty to the Reorganization Event or an Affiliate of such other party) of the number of shares of Common Stock into which each share of Series B-1 Preferred Stock would then be convertible (such securities, cash and other property, the "Exchange Property").

(b) In the event that holders of the shares of Common Stock have the opportunity to elect the form of consideration to be received in such transaction, the consideration that the Holders are entitled to receive upon conversion shall be deemed to be the types and amounts of consideration received by a plurality of the holders of the shares of Common Stock that did not make an affirmative election.

(c) The above provisions of this Section 10 shall similarly apply to successive Reorganization Events. If the provisions of Section 9 apply to any event or occurrence then this Section 10 will not apply.

(d) The Company (or any successor) shall, within 20 days of the consummation of any Reorganization Event, provide written notice to the Holders of such consummation of such event and of the kind and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section 10.

(c) The Company shall not enter into any agreement for a transaction constituting a Reorganization Event unless (i) such agreement provides for or does not interfere with or prevent (as applicable) conversion of the Series B-1 Preferred Stock into the Exchange Property in a manner that is consistent with and gives effect to this Section 10, and (ii) to the extent that the Company is not the surviving corporation in such Reorganization Event or will be dissolved in connection with such Reorganization Event, proper provision shall be made in the agreements governing such Reorganization Event for the conversion of the Series B-1 Preferred Stock into stock of the Person surviving such Reorganization Event or, in the case of a Reorganization Event described in Section 10(a)(ii), an exchange of Series B-1 Preferred Stock for the stock of the Person to whom the Company's assets are conveyed or transferred, having voting powers, preferences, and relative, participating, optional or other special rights as nearly equal as possible to those provided in this Certificate of Designations.

Section 11. Voting Powers. (a) In addition to the other voting powers and consent rights set forth in this Certificate of Designations, including, without limitation, Section 1, this Section 11 and Section 12, and as otherwise provided by law, the Holders shall be entitled to (i) vote with the holders of the Common Stock on all matters submitted for a vote of holders of Common Stock other than the election of directors (as to which the Holders shall have rights voting separately as a class as set out in this Section 11), (ii) when voting with the Common Stock on the matters set forth in Section 11(a)(i) a number of votes equal to the number of shares of Common Stock into which each such share of Series B-1 Preferred Stock is then convertible at the time of the record date for the determination of the holders of Common Stock entitled to vote on the matter in question and (iii) notice of all stockholders' meetings in accordance with the Certificate of Incorporation and Amended and Restated By-laws of the Company (the "By-Laws"), and applicable law or regulation or stock exchange rule, as if the Holders of Series B-1 Preferred Stock were holders of Common Stock.

(b) For as long as (i) at least 1,000,000 but less than 3,000,000 shares of Series B-1 Preferred Stock (or, if less than 1,000,000 shares of Series B-1 Preferred Stock are then outstanding, an aggregate of 1,000,000 shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock) are outstanding the Holders of a majority of the then outstanding shares of Series B-1 Preferred Stock shall have the exclusive right, voting separately as a class, to appoint and elect one director; (ii) at least 3,000,000 but less than 5,000,000 shares of Series B-1 Preferred Stock are outstanding the Holders of a majority of the then outstanding shares of Series B-1 Preferred Stock shall have the exclusive right, voting separately as a class, to appoint and elect two directors; (iii) at least 5,000,000 but less than 7,000,000 shares of Series B-1 Preferred Stock are outstanding the Holders of a majority of the then outstanding shares of Series B-1 Preferred Stock shall have the exclusive right, voting separately as a class, to appoint and elect three directors (at least one of whom shall be an Independent Director); (iv) at least 7,000,000 but less than 9,000,000 shares of Series B-1 Preferred Stock are outstanding the Holders of a majority of the then outstanding shares of Series B-1 Preferred Stock shall have the exclusive right, voting separately as a class, to appoint and elect four directors (at least two of whom shall be Independent Directors); (v) at least 9,000,000 but

less than 11,000,000 shares of Series B-1 Preferred Stock are outstanding the Holders of a majority of the then outstanding shares of Series B-1 Preferred Stock shall have the exclusive right, voting separately as a class, to appoint and elect five directors (at least two of whom shall be Independent Directors); and (vi) at least 11,000,000 shares of Series B-1 Preferred Stock are outstanding the Holders of a majority of the then outstanding shares of Series B-1 Preferred Stock shall have the exclusive right, voting separately as a class, to appoint and elect six directors (at least three of whom shall be Independent Directors) (each such director, herein referred to as a "Series B-1 Director"). Notwithstanding the foregoing, if at any time the total number of directors constituting the whole Board of Directors does not equal 15 (except pursuant to the last sentence of this Section 11(b)), then the number of directors the holders of Series B-1 Preferred Stock are entitled to appoint and elect (including proportionately the number of such directors who must be Independent Directors) shall be equal to (i) the number of directors such holders would be entitled to appoint and elect (including proportionately the number of such directors who must be Independent Directors) pursuant to the first sentence of this Section 11(b) multiplied by (ii)(a) the total number of directors constituting the whole Board of Directors divided by (b) 15, rounded up or down to the nearest whole number; provided, however, (A) that so long as an aggregate of at least 1,000,000 shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock are outstanding, the number of Series B-1 Directors shall not be less than 1, and (B) that the number of Series B-1 Directors required to be Independent Directors shall not exceed, for any given number of Series B-1 Directors, the number of Independent Directors required by the first sentence of this Section 11(b). In connection with any annual or special meeting of stockholders of the Company at which directors are to be elected (or any action by written consent in lieu of a meeting), the Holders of the Series B-1 Preferred Stock shall be entitled to elect such number of Series B-1 Directors as specified by the first two sentences of this Section 11(b) based on the number of shares of Series B-1 Preferred Stock outstanding on the record date for such meeting (or written consent). The holders of record of the shares of Common Stock and of any other class or series of capital stock entitled to vote on the election of directors (other than the Series B-1 Preferred Stock), exclusively and voting together as a single class, shall, subject to the rights of any additional series of Preferred Stock that may be established from time to time, be entitled to elect the balance of the total number of directors of the Company at any meeting of stockholders of the Company at which directors are to be elected that are not to be elected or appointed by the Holders of the Series B-1 Preferred Stock. Upon the Issue Date, and at each time following the Issue Date that an increase in the number of shares of Series B-1 Preferred Stock outstanding shall entitle the Holders thereof to an increase in the number of Series B-1 Directors that may then be elected or appointed, if at such time there are not otherwise sufficient vacancies on the Board of Directors to permit the election or appointment of such additional Series B-1 Directors, the number of directors constituting the whole Board of Directors shall be increased by the smallest number sufficient to make possible the immediate election or appointment of all the Series B-1 Directors that the Holders shall then be entitled to elect or appoint pursuant to this Section 11; provided, however, that if the total number of directors constituting the Board of Directors shall at any time exceed 15, then upon the expiration of the then current term of directors (or, if earlier, the

resignation, removal or death of any director then serving other than a Series B-1 Director), the number of directors constituting the Board of Directors shall automatically be reduced to 15 (but not below the number of directors then serving whose terms shall not have expired or been terminated by resignation, removal or death).

(c) Each Series B-1 Director so elected shall serve until his or her successor is elected and qualified or his or her earlier resignation or removal; any vacancy or newly created directorship in the position of any of the Series B-1 Directors (which, for avoidance of doubt, shall include not only vacancies in positions that were previously occupied by any Series B-1 Directors but also any vacancy or newly created directorship on the Board of Directors occurring at a time when the Holders of the Series B-1 Preferred Stock are entitled to elect Series B-1 Directors pursuant to Section 11(b) hereof and the filling of such vacancy or newly created directorship would facilitate the fulfillment of such rights of the Holders of the Series B-1 Preferred Stock) may be filled only by the Holders of a majority of the then outstanding shares of Series B-1 Preferred Stock or by any remaining Series B-1 Directors and not by either the holders of any other class or series of capital stock or the Board of Directors generally; and each Series B-1 Director may, during his or her term of office, be removed at any time, with or without cause, by and only by the holders of a majority of the then outstanding shares of Series B-1 Preferred Stock, at a special meeting called for such purpose or by written consent of such holders, and any vacancy created by such removal may also be filled by such holders at such meeting or by such consent. Notwithstanding the foregoing, at such time as the number of shares of Series B-1 Preferred Stock outstanding falls below any threshold set forth in Section 11(b) such that the number of Series B-1 Directors to be elected at the next annual meeting of stockholders pursuant to Section 11(b) would be reduced, then (i) the term of office of each Series B-1 Director shall continue until the next meeting of stockholders at which directors are to be elected (or the earlier resignation, removal or death of such Series B-1 Director), notwithstanding the fact that the number of shares of Series B-1 Preferred Stock has fallen below any threshold set forth in Section 11(b), and at such next meeting the Holders of the Series B-1 Preferred Stock shall only have the right to elect such number of Series B-1 Directors as are permitted by Section 11(b) hereof based on the number of shares of Series B-1 Preferred Stock outstanding on the record date for such meeting, and (ii) any such vacancy which would not be filled by a Series B-1 Director at such meeting may be filled prior to or at such meeting by the Board of Directors or the stockholders of the Company generally, and not by the Holders of Series B-1 Preferred Stock voting as a separate class, in accordance with the Certificate of Incorporation, the By-Laws and applicable law. The Company and the Board of Directors shall take any and all actions within their respective power to ensure compliance with the terms of this Section 11.

(d) Each holder of Series B-1 Preferred Stock will have one vote per share on any matter on which Holders of Series B-1 Preferred Stock are entitled to vote separately as a class, whether at a meeting or by written consent.

(e) If Holders of Series B-1 Preferred Stock are entitled to vote together as a separate and single class with Parity Securities (other than any class or

series of Parity Securities that votes with the Common Stock as to the election of directors or otherwise), for purposes of determining the voting powers of the Holders of Series B-1 Preferred Stock, each Holder will be entitled to 1000 votes for each $1,000 of liquidation preference to which its shares of Series B-1 Preferred Stock are entitled. If Holders of Series B-1 Preferred Stock are entitled to vote together as a separate class with any other securities, each Holder will be entitled to the number of votes equal to the number of shares of Common Stock into which each such share of Series B-1 Preferred Stock is then convertible at the time of the related record date (or the time of the vote if no record date is fixed).

(f) For so long as at least 3,000,000 shares of Series B-1 Preferred Stock are outstanding the Holders of a majority of the then outstanding shares of Series B-1 Preferred Stock shall have the right, subject to compliance with applicable NASDAQ Marketplace Rules and U.S. Securities and Exchange Commission rules and regulations, to designate one (or, subject to the last sentence of this Section 11(f), more) of the Series B-1 Directors to sit on each committee of the Board of Directors (such rights, the "Committee Rights"); *provided* that with respect to any committee of the Board of Directors required under applicable NASDAQ Marketplace Rules or U.S. Securities and Exchange Commission rules and regulations to be comprised solely of Independent Directors, such holders shall be entitled to Committee Rights only to the extent that any Series B-1 Directors are Independent Directors. Subject to the proviso at the end of the immediately preceding sentence, the number of Series B-1 Directors that the Holders are entitled to designate to sit on any committee of the Board of Directors pursuant to their Committee Rights shall be equal to the total number of directors constituting such committee times a fraction, of which the numerator is the number of Series B-1 Directors on the Board of Directors at such time, and the denominator is the total number of directors constituting the whole Board of Directors at such time, rounded up or down to the nearest whole number (but in any case not less than one).

Section 12. Special Class Vote Matters. For so long as an aggregate of at least 6,250,000 shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock are issued and outstanding, in addition to any vote or consent of the stockholders of the Company required by law, NASDAQ rules, the Certificate of Incorporation or the By-laws, neither the Company nor any of its Subsidiaries will take any of the following actions, either directly or indirectly, whether by merger, consolidation or otherwise, following the Issue Date without having obtained the prior written consent or affirmative vote of the Holders of at least a majority of the then outstanding shares of the Series B-1 Preferred Stock and the Series B-2 Preferred Stock, voting together as a separate class, either by written consent or by the affirmative vote of the Holders of at least a majority of the then outstanding shares of the Series B-1 Preferred Stock and the Series B-2 Preferred Stock, at a meeting called for that purpose, consenting or voting (as the case may be) together as a separate class:

(a) any grant, creation, authorization or issuance (or the increase in the authorized number) of any class or series of capital stock or any options, warrants, convertible securities or other rights of any kind to acquire or receive shares of capital

stock of the Company, or the issuance, sale or other disposition by the Company of any shares of capital stock, or of any options, warrants, convertible securities or other such rights, held by the Company in treasury, other than in connection with (A) the exercise of employee options in accordance with their terms, or (B) the granting of equity based compensation to the extent approved by the Board of Directors;

(b) any consolidation or merger with or into any other entity, the consolidation or merger of any other entity with or into the Company, or any liquidation, dissolution or winding-up of the business and affairs of the Company, or the sale of all or substantially all of the Company's property or business or other assets or the sale of all or substantially all of the stock or assets of XM Satellite Radio, Inc., XM Satellite Radio Holdings, Inc. or Satellite CD Radio Inc.;

(c) except with respect to any sale or disposition of the Washington D.C. Property or in the ordinary course of business, any acquisition or disposition of assets, in each case, having a value of more than $10,000,000, or any series of related acquisitions or dispositions having a value in the aggregate of more than $20,000,000, in the aggregate;

(d) any sale or transfer of (including without limitation any spin-off, split-off or similar transaction with respect to) any equity security or ownership interests in any Company Subsidiary (as defined in the Investment Agreement) that at the relevant time is a material Company Subsidiary, any merger or consolidation of any such Company Subsidiary, or any liquidation, dissolution, or sale of substantially all the assets of any such Company Subsidiary, in each case other than any such transaction that would not result in such Company Subsidiary no longer being wholly-owned, directly or indirectly, by the Company; provided, however, that any Company Subsidiary that holds any FCC or other material license or any satellite contract or other material contract, or that holds any material assets, or that generates any material revenue, or that is otherwise material, shall constitute a material Company Subsidiary for purposes of this Section 12(d);

(e) any incurrence of indebtedness, or the assumption or guarantee of the obligations of any person, other than (i) the incurrence, assumption or guarantee of indebtedness not in excess of $10,000,000 per calendar year or (ii) to the extent approved by the Board of Directors of the Company prior to the entry of definitive documentation therefor, the incurrence of indebtedness to refinance, replace or restructure existing indebtedness in an amount not in excess of the principal (or, in the case of any securities with original issuance discount, accreted value), plus premium, if any, and accrued interest on such existing indebtedness;

(f) conducting or engaging in any business in any material respect other than the business in which the Company and its Subsidiaries are engaged as of the date hereof and any business reasonably related or complementary thereto;

(g) amending, altering, repealing, or adding any provision to the Certificate of Incorporation (including, without limitation, this Certificate of Designations) or By-laws in a manner that adversely affects the powers, rights, privileges or preferences of the Holders of the Series B-1 Preferred Stock and/or the Series B-2 Preferred Stock;

(h) except as provided for in this Certificate of Designations, any increase or decrease in the total number of directors constituting the whole Board of Directors; and

(i) entering into an agreement for, or committing to agree to take, or consenting to, any of the foregoing actions.

Section 13. Fractional Shares. (a) No fractional shares of Common Stock will be issued as a result of any conversion of shares of Series B-1 Preferred Stock.

(b) In lieu of any fractional share of Common Stock otherwise issuable in respect of any conversion pursuant to Section 7 hereof, the Company shall pay an amount in cash (computed to the nearest cent) equal to the same fraction of the Closing Price of the Common Stock determined as of the second Trading Day immediately preceding the Conversion Date.

(c) If more than one share of the Series B-1 Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series B-1 Preferred Stock so surrendered.

Section 14. Reservation of Common Stock. (a) The Company shall at all times reserve and keep available out of its authorized and unissued Common Stock or shares acquired by the Company, solely for issuance upon the conversion of shares of Series B-1 Preferred Stock as provided in this Certificate of Designations, free from any preemptive or other similar rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series B-1 Preferred Stock then outstanding. The Company shall take all such corporate and other actions as from time to time may be necessary to ensure that all shares of Common Stock issuable upon conversion of shares of Series B-1 Preferred Stock at the applicable Conversion Rate in effect from time to time will, upon issue, be duly and validly authorized and issued, fully paid and nonassessable and free of any preemptive or similar rights. For purposes of this Section 14, the number of shares of Common Stock that shall be deliverable upon the conversion of all outstanding shares of Series B-1 Preferred Stock shall be computed as if at the time of computation all such outstanding shares were held by a single Holder.

(b) Notwithstanding the foregoing, the Company shall be entitled to deliver upon conversion of shares of Series B-1 Preferred Stock, as herein provided, shares of Common Stock acquired by the Company (in lieu of the issuance of authorized

and unissued shares of Common Stock), so long as (i) any such acquired shares are free and clear of all liens, charges, security interests or encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders) and (ii) all such acquired shares have all the same attributes as any other share of Common Stock then outstanding, including without limitation any rights that may then be attached to all or substantially all of the Common Stock then outstanding pursuant to any stockholders' rights plan or similar arrangement.

(c) All shares of Common Stock delivered upon conversion of the Series B-1 Preferred Stock shall be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(d) Prior to the delivery of any securities that the Company shall be obligated to deliver upon conversion of the Series B-1 Preferred Stock, the Company shall use its reasonable best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(e) The Company hereby covenants and agrees that, if at any time the Common Stock shall be listed on The NASDAQ Global Select Market or any other national securities exchange or automated quotation system, the Company will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all the Common Stock issuable upon conversion of the Series B-1 Preferred Stock.

(f) Regulatory Matters. If any shares of Common Stock or any other property or securities that would be issuable upon conversion of shares of Series B-1 Preferred Stock require the approval of any governmental authority before such shares may be issued upon conversion, the Company, at the request and expense of the holder(s) of such Series B-1 Preferred Stock, will use its reasonable best efforts to cooperate with the holder(s) of such Series B-1 Preferred Stock to obtain such approvals. Neither the Company nor any its subsidiaries shall be required to take (or commit to take) any actions pursuant to this Section 14(f), if the Company determines, in good faith, that such actions would reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

Section 15. Equal Treatment. To the extent that the Company reclassifies, subdivides or combines the Series B-2 Preferred Stock, the Series B-1 Preferred Stock shall be reclassified, subdivided or combined on an equal per share basis.

Section 16. Replacement Certificates. The Company shall replace any mutilated Series B-1 Preferred Stock certificate at the Holder's expense upon surrender of that certificate to the Company. The Company shall replace certificates that become

destroyed, stolen or lost at the Holder's expense upon delivery to the Company of satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may reasonably be required by the Company.

Section 17. Miscellaneous. (a) All notices referred to herein shall be in writing, and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given upon the earlier of receipt thereof or three Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, addressed: (i) if to the Company, to its office at 1221 Avenue of the Americas, 36th Floor, New York, New York 10020, Attention: Chief Financial Officer, or (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Company, or (iii) to such other address as the Company or any such Holder, as the case may be, shall have designated by notice similarly given.

(b) The Company shall pay any and all stock transfer and documentary stamp taxes that may be payable in respect of any issuance or delivery of shares of Series B-1 Preferred Stock or shares of Common Stock or other securities issued on account of Series B-1 Preferred Stock pursuant hereto or certificates representing such shares or securities. The Company shall not, however, be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Series B-1 Preferred Stock or Common Stock or other securities in a name other than that in which the shares of Series B-1 Preferred Stock with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any Person other than a payment to the registered holder thereof, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Company the amount of any such tax or has established, to the reasonable satisfaction of the Company, that such tax has been paid or is not payable.

(c) No share of Series B-1 Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Company, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated issued or granted; provided, however, that the Investment Agreement provides the Holder of the Series B-1 Preferred Stock with a participation right in the case of any issuance of new equity securities by the Company, subject to and in accordance with the terms and conditions set forth therein.

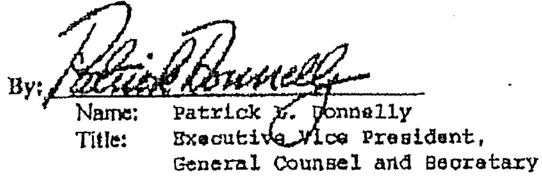
(d) The shares of Series B-1 Preferred Stock shall not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law.

(e) Adjustment of Shares Numbers. If, after the Issue Date, there is a subdivision, split, stock dividend, combination, reclassification or similar event ("Adjustment Event") with respect to any shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock, then upon the effectiveness of such Adjustment Event all references

in Sections 11 and 12 to specific numbers of such shares shall automatically be adjusted proportionately, so that the Holders of such shares will retain the same rights under Sections 11 and 12 immediately following the effectiveness of such Adjustment Event as they did immediately prior thereto.

IN WITNESS WHEREOF, SIRIUS XM RADIO INC. has caused this Certificate of Designations to be signed by its authorized corporate officer this 5th day of March, 2009.

SIRIUS XM RADIO INC.



By: ______________________

Name: Patrick L. Donnelly

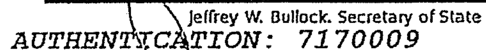
Title: Executive Vice President, General Counsel and Secretary

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "SIRIUS XM RADIO INC.", FILED IN THIS OFFICE ON THE FIFTH DAY OF MARCH, A.D. 2009, AT 2:20 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Jeffrey W. Bullock, Secretary of State

2230857 8100

AUTHENTICATION: 7170009

090240538

DATE: 03-05-09

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:19 PM 03/05/2009
FILED 02:20 PM 03/05/2009
SRV 090240538 - 2230857 FILE

CERTIFICATE OF DESIGNATIONS

OF

CONVERTIBLE PERPETUAL NON-VOTING

PREFERRED STOCK, SERIES B-2

OF

Sirius XM Radio Inc.

Pursuant to Section 151 of the
General Corporation Law
of the State of Delaware

Sirius XM Radio Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Company"), in accordance with the provisions of Sections 103 and 151 thereof, DOES HEREBY CERTIFY:

FIRST: The Amended and Restated Certificate of Incorporation of the Company authorizes the issuance of 50,000,000 shares of preferred stock, par value $0.001 per share, of the Company ("Preferred Stock") in one or more series, and expressly authorizes the Board of Directors to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock, and, with respect to each such series, to fix by resolution or resolutions the number of shares constituting and the designation of each series of Preferred Stock, the voting powers (if any) of the shares of such series, and the preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof.

SECOND: The Board of Directors, in accordance with the provisions of the Amended and Restated Certificate of Incorporation, as amended, the Amended and Restated By-laws of the Company and applicable law, adopted the following resolution on February 15, 2009, providing for the issuance of a series of 11,500,000 shares of Preferred Stock of the Company designated as "Convertible Perpetual Non-Voting Preferred Stock, Series B-2".

RESOLVED, that pursuant to the provisions of the Amended and Restated Certificate of Incorporation, the Amended and Restated By-laws of the Company and applicable law, a series of Preferred Stock, par value $0.001 per share, of the Company be and hereby is created, and that the number of shares of such series, and the voting and other powers, designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

RIGHTS AND PREFERENCES

Section 1. Designation. There is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as the "Convertible Perpetual Non-Voting Preferred Stock, Series B-2" (the "Series B-2 Preferred Stock"). The number of shares constituting such series shall be 11,500,000. Other than shares issued (x) pursuant to the Investment Agreement or (y) in connection with a stock split, dividend or distribution payable only to Holders of Series B-2 Preferred Stock in respect of existing shares of Series B-2 Preferred Stock, so long as any shares of Series B-2 Preferred Stock or Series B-1 Preferred Stock are issued and outstanding, the Company shall not issue, or enter into any agreement to issue, any shares of Series B-2 Preferred Stock, or increase the authorized number of shares of Series B-2 Preferred Stock, without the prior written consent or affirmative vote of the Holders of at least 75% of the then outstanding shares of Series B-2 Preferred Stock and Series B-1 Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a separate class.

Section 2. Ranking. (a) The Series B-2 Preferred Stock will rank, with respect to dividend rights, on a parity with the Company's series of preferred stock designated as the "Convertible Perpetual Preferred Stock, Series B-1" (the "Series B-1 Preferred Stock"), the Company's common stock, par value $0.001 per share (the "Common Stock"), the Series A Convertible Preferred Stock, each other class or series of capital stock of the Company the terms of which expressly provide that such class or series will rank on a parity with the Series B-2 Preferred Stock as to dividend rights and each other class or series of capital stock the terms of which do not expressly provide that it ranks senior to or junior to the Series B-2 Preferred Stock as to dividend rights (provided that any such other class or series of capital stock is authorized in accordance with the terms of Section 12 of this Certificate of Designations, to the extent Section 12 remains applicable at the time such class or series of capital stock is authorized).

(b) The Series B-2 Preferred Stock will rank, with respect to rights on liquidation, winding-up and dissolution, (i) on a parity with the Series B-1 Preferred Stock and each other class or series of capital stock of the Company the terms of which expressly provide that such class or series will rank on a parity with the Series B-2 Preferred Stock as to rights on liquidation, winding-up and dissolution of the Company (provided that any such other class or series of capital stock is authorized in accordance with the terms of Section 12 of this Certificate of Designations, to the extent Section 12 remains applicable at the time such class or series of capital stock is authorized) and (ii) senior to the Common Stock, and the Series A Convertible Preferred Stock and each other class or series of capital stock the terms of which do not expressly provide that it ranks on a parity with or senior to the Series B-2 Preferred Stock as to rights on liquidation, winding-up and dissolution of the Company (provided that any such other class or series of capital stock is authorized in accordance with the terms of Section 12 of this Certificate of Designations, to the extent Section 12 remains applicable at the time such class or series of capital stock is authorized).

(c) The Series B-1 Preferred Stock and each other class or series of capital stock of the Company the terms of which expressly provide that such class or series will rank on a parity with the Series B-2 Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (provided that any such other class or series of capital stock is authorized in accordance with the terms of Section 12 of this Certificate of Designations, to the extent Section 12 remains applicable at the time such class or series of capital stock is authorized) are herein referred to as "Parity Securities."

Section 3. Definitions. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:

"Adjustment Event" has the meaning set forth in Section 17(e).

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, (i) "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing, (ii) natural persons shall not be deemed to be Affiliates of each other, (iii) the Company and its Subsidiaries shall not be deemed to be Affiliates of the Liberty Parties (as defined in the Investment Agreement), and (iv) the DirecTV Group, Inc. ("DirecTV") and its Subsidiaries shall not be deemed to be Affiliates of Liberty Media Corporation and its Subsidiaries.

"Board of Directors" means the board of directors of the Company or any committee thereof duly authorized to act in the relevant matter on behalf of such board of directors.

"Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York are generally required or authorized by law to be closed.

"Certificate of Designations" means this Certificate of Designations of Sirius XM Radio Inc., dated March 5, 2009

"Certificate of Incorporation" means the Amended and Restated Certificate of Incorporation of the Company, as amended.

"Close of Business" means (i) with respect to the Record Date for any issuance, dividend, or distribution declared, paid or made on or with respect to any capital stock of the Company, the closing of the Company's stock register on such date, for the purpose of determining the holders of capital stock entitled to receive such issuance, dividend or distribution, and (ii) in all other cases, 6:00 pm, New York City time, on the date in question.

"Closing Price" of the Common Stock (or other relevant capital stock or equity interest) on any date of determination means the closing sale price on such date or, if no closing sale price is reported, the last reported sale price of the shares of the Common Stock (or other relevant capital stock or equity interest) on The NASDAQ Global Select Market. If the Common Stock (or other relevant capital stock or equity interest) is not traded on The NASDAQ Global Select Market on any date of determination, the Closing Price of the Common Stock (or other relevant capital stock or equity interest) on such date of determination means the closing sale price on such date as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or other relevant capital stock or equity interest) is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national or regional securities exchange on which the Common Stock (or other relevant capital stock or equity interest) is so listed or quoted, or if the Common Stock (or other relevant capital stock or equity interest) is not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price on such date for the Common Stock (or other relevant capital stock or equity interest) in the over-the-counter market as reported by Pink Sheets LLC or similar organization, or, if that bid price is not available, the market price of the Common Stock (or other relevant capital stock or equity interest) on that date as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose.

For purposes of this Certificate of Designations, all references herein to the "Closing Price" and "last reported sale price" of the Common Stock (or other relevant capital stock or equity interest) on The NASDAQ Global Select Market shall be such closing sale price and last reported sale price as reflected on the website of The NASDAQ Global Select Market (http://www.nasdaq.com) and as reported by Bloomberg Professional Service; *provided* that in the event that there is a discrepancy between the closing sale price or last reported sale price as reflected on the website of The NASDAQ Global Select Market and as reported by Bloomberg Professional Service, the closing sale price and last reported sale price on the website of The NASDAQ Global Select Market shall govern.

"Common Stock" has the meaning set forth in Section 2(a).

"Company" means Sirius XM Radio Inc., a Delaware corporation

"Conversion Date" has the meaning set forth in Section 7.

"Conversion Rate" means 206.9581409 shares of Common Stock per share of Series B-2 Preferred Stock, subject to adjustment in accordance with the provisions of this Certificate of Designation.

"Exchange Property" has the meaning set forth in Section 10(a).

"Holder" means the Person in whose name the shares of the Series B-2 Preferred Stock are registered, which may be treated by the Company and the Company's transfer agent and registrar as the absolute owner of the shares of Series B-2 Preferred Stock for

the purpose of making payment and settling the related conversions and for all other purposes.

"Investment Agreement" means the Investment Agreement, dated as of February 17, 2009, between the Company and Liberty Radio, LLC, a Delaware limited liability company, as amended.

"Issue Date" means the date upon which any shares of Series B-2 Preferred Stock are first issued.

"Liquidation Preference" means, as to the Series B-2 Preferred Stock, $0.001 per share (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series B-2 Preferred Stock).

"Parity Securities" has the meaning set forth in Section 2(c). For the avoidance of doubt, the term "Parity Securities" does not mean or include the Common Stock.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.

"Preferred Stock" has the meaning set forth in the recitals.

"Record Date" means, with respect to any issuance, dividend, or distribution declared, paid or made on or with respect to any capital stock of the Company, the date fixed for the determination of the stockholders entitled to receive such issuance, dividend or distribution.

"Regulatory Approval" means, to the extent applicable and required to permit a Holder to convert such Holder's shares of Series B-2 Preferred Stock into Common Stock or Series B-1 Preferred Stock and to own such Common Stock or Series B-1 Preferred Stock without such Holder being in violation of applicable law, rule or regulation, the receipt of approvals and authorizations of, filings and registrations with, notifications to, or expiration or termination of any applicable waiting period under, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

"Reorganization Event" has the meaning set forth in Section 10(a).

"Series A Preferred Stock" means the shares of the Company's Series A Convertible Preferred Stock.

"Series B-1 Preferred Stock" has the meaning set forth in Section 2.

"Series B-2 Preferred Stock" has the meaning set forth in Section 1.

"Trading Day" means a day on which the shares of Common Stock:

(i) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the Close of Business; and

(ii) have traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock.

"Transfer" means a transfer, directly or indirectly, of beneficial ownership of shares of Series B-2 Preferred Stock by the Holder thereof to any Person. For the avoidance of doubt, as used herein the term Transfer does not include a Qualified Hedging Transaction, a Qualified Pledge, or a Qualified Stock Lending Transaction, as such terms are defined in the Investment Agreement.

"Washington D.C. Property" means the properties located at 1500 Eckington Place NE, Washington D.C. 20002 and 60 Florida Avenue NE, NE, Washington D.C. 20002.

Section 4. Dividends. (a) From and after the Issue Date, Holders shall be entitled to receive, when, as and if declared by the Board of Directors, out of any funds legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(b), and no more.

(b) If the Board of Directors declares and pays a cash dividend in respect of Common Stock or any other dividend or distribution in respect of Common Stock for which no adjustment in the Conversion Rate is required to be made pursuant to Section 9 or Section 10 (other than a distribution of rights issued pursuant to a stockholders' rights plan (in which event the provisions of Section 9(b) shall apply), including without limitation any dividend or distribution declared before and paid after the Issue Date, then the Board of Directors shall declare and pay to the Holders of the Series B-2 Preferred Stock, on the same dates on which such cash dividend (or other dividend or distribution) is declared or paid, as applicable, on the Common Stock, a dividend or distribution in the same form and in an amount per share of Series B-2 Preferred Stock equal to the product of (i) the per share dividend or distribution declared and paid in respect of each share of Common Stock and (ii) the number of shares of Common Stock into which such share of Series B-2 Preferred Stock is then convertible, determined for this purpose as if Regulatory Approval has been obtained; provided, however, that to the extent that the Company declares a dividend on the Series B-2 Preferred Stock and on any class or series of capital stock that ranks on parity with the Series B-2 Preferred Stock with respect to dividend rights but does not make the full payment of such declared dividends, the Company shall allocate the dividend payments on a pro rata basis among the Holders of the Series B-2 Preferred Stock and the holders of any class or series of capital stock that ranks on parity with the Series B-2 Preferred Stock with respect to dividend rights.

(c) Each dividend will be payable to Holders of record as they appear in the records of the Company at the Close of Business on the Record Date therefor,

which shall be the same day as the Record Date for the payment of the corresponding dividend to the holders of shares of Common Stock.

(d) Dividends on the Series B-2 Preferred Stock are non-cumulative. Declared and unpaid dividends shall bear no interest (except to the extent of any interest on such dividends payable in respect of the Common Stock).

Section 5. Liquidation (a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, Holders of Series B-2 Preferred Stock shall be entitled to receive out of the assets of the Company or proceeds thereof legally available for distribution to stockholders of the Company, after satisfaction of all liabilities, if any, to creditors of the Company and subject to Section 5(b) and to the rights of holders of any shares of capital stock of the Company then outstanding ranking senior to the Series B-2 Preferred Stock in respect of distributions upon liquidation, dissolution or winding up of the Company, and before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other classes or series of capital stock of the Company ranking junior to the Series B-2 Preferred Stock as to such distribution, a liquidating distribution in an amount equal to (i) the Liquidation Preference per share, together with an amount equal to all dividends, if any, that have been declared but not paid on the shares of Series B-2 Preferred Stock prior to the date of payment of such distribution (but without any accumulation in respect of dividends that have not been declared prior to such payment date) plus (ii) the amount of the liquidating distributions, as determined by the Company (or the trustee or other Person or Persons administering the liquidation, dissolution or winding-up of the Company in accordance with applicable law) as of a date that is at least 10 Business Days before the first liquidating distribution is made on Series B-2 Preferred Stock, that would be made on the number of shares of Common Stock into which such shares of Series B-2 Preferred Stock are then convertible on such date of determination and after any liquidating distribution having been made on shares of Series B-2 Preferred Stock, as adjusted for any actions between such date of determination and the liquidation date as would require a change in the Conversion Rate hereunder.

(b) In the event the assets of the Company available for distribution to stockholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series B-2 Preferred Stock and the corresponding amounts payable on any Parity Securities, Holders and the holders of such Parity Securities shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.

(c) The Company's consolidation or merger with or into any other entity, the consolidation or merger of any other entity with or into the Company, or the sale of all or substantially all of the Company's property or business or other assets will not constitute its liquidation, dissolution or winding up.

Section 6. Maturity. The Series B-2 Preferred Stock shall be perpetual unless converted in accordance with this Certificate of Designations.

Section 7. Conversion. Subject to the receipt of the Regulatory Approval, to the extent applicable and required, each share of Series B-2 Preferred Stock shall be convertible, at the option of the Holder thereof, at any time, and from time to time, into (i) the number of duly authorized, validly issued, fully paid and nonassessable shares of Common Stock equal to the Conversion Rate in effect at the time of conversion (subject to aggregation and the payment of cash in lieu of fractional shares as provided in Section 13 of this Certificate of Designations) or (ii) one duly authorized, validly issued, fully paid and nonassessable share of Series B-1 Preferred Stock for each share of Series B-2 Preferred Stock. In order to convert shares of Series B-2 Preferred Stock into shares of Common Stock or Series B-1 Preferred Stock, the Holder must surrender the certificates representing such shares of Series B-2 Preferred Stock, accompanied by transfer instruments reasonably satisfactory to the Company, at the principal office of the Company (or such other place mutually acceptable to the Holder and the Company), together with written notice that such Holder elects to convert all or such number of shares represented by such certificates as specified therein With respect to a conversion pursuant to this Section 7, the date of receipt of such certificates, together with such notice, by the Company or its authorized agent will be the date of conversion (the "Conversion Date"). In the event that a Holder Transfers shares of Series B-2 Preferred Stock, other than in connection with a Transfer permitted by and in accordance with the terms of Section 4.2(b)(1) or (2) of the Investment Agreement, such shares of Series B-2 Preferred Stock so Transferred shall be automatically converted into shares of Common Stock in accordance with clause (i) above at the Conversion Rate then in effect immediately prior to such Transfer by a Holder (in which case the date of such Transfer shall be deemed to be the Conversion Date).

Section 8. Conversion Procedures. (a) On the Conversion Date with respect to any share of Series B-2 Preferred Stock, certificates representing shares of Common Stock or Series B-1 Preferred Stock, as applicable, shall be promptly issued and delivered to the Holder thereof or such Holder's designee upon presentation and surrender of the certificate evidencing the Series B-2 Preferred Stock to the Company and, if required, the furnishing of appropriate endorsements and transfer documents and the payment of all transfer and similar taxes.

(b) From and after the Conversion Date, the shares of Series B-2 Preferred Stock to be converted on such Conversion Date will cease to be entitled to any dividends that may thereafter be declared on the Series B-2 Preferred Stock; said shares of Series B-2 Preferred Stock will no longer be deemed to be outstanding for any purpose; and all rights (except the right to receive from the Company the Common Stock or Series B-1 Preferred Stock upon conversion thereof and any dividends previously declared on the Series B-2 Preferred Stock but not paid) of the Holder of such shares of Series B-2 Preferred Stock to be converted shall cease and terminate with respect to such shares. Prior to the Conversion Date, except as otherwise provided herein, Holders shall have no rights as owners of the Common Stock (or other relevant capital stock or equity interest into which the Series B-2 Preferred Stock may then be convertible in accordance

herewith) (including voting powers, and rights to receive any dividends or other distributions on the Common Stock or other securities issuable upon conversion) by virtue of holding shares of Series B-2 Preferred Stock.

(c) Shares of Series B-2 Preferred Stock duly converted in accordance with this Certificate of Designations, or otherwise reacquired by the Company, will resume the status of authorized and unissued shares of Preferred Stock, undesignated as to series, and will be available for future issuance, but shall not be reissued as shares of Series B-2 Preferred Stock. The Company may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series B-2 Preferred Stock, but not below the aggregate number of shares of Series B-2 Preferred Stock then outstanding.

(d) The Person or Persons entitled to receive the Common Stock, Series B-1 Preferred Stock and/or cash, securities or other property issuable upon conversion of Series B-2 Preferred Stock shall be treated for all purposes as the record holder(s) of such shares of Common Stock, Series B-1 Preferred Stock and/or securities as of the Close of Business on the Conversion Date with respect thereto. In the event that a Holder shall not by written notice designate the name in which shares of Common Stock, Series B-1 Preferred Stock and/or cash, securities or other property (including payments of cash in lieu of fractional shares) to be issued or paid upon conversion of shares of Series B-2 Preferred Stock should be registered or paid or the manner in which such shares should be delivered, the Company shall be entitled to register and deliver such shares, and make such payment, in the name of the Holder and in the manner shown on the records of the Company

Section 9 Anti-Dilution Adjustments. (a) The Conversion Rate shall be subject to adjustment from time to time in accordance with this Section 9. Concurrently with any adjustment to the Conversion Rate set forth in the Series B-1 Preferred Stock Certificate of Designations, the Conversion Rate set forth in this Certificate of Designations shall be automatically adjusted such that the Conversion Rate in this Certificate of Designations is the same as the Conversion Rate, as so adjusted, set forth in the Series B-1 Certificate of Designations. For the avoidance of doubt, notwithstanding any adjustment to the Conversion Rate set forth in the Series B-1 Preferred Stock Certificate of Designations, each share of Series B-2 Preferred Stock shall continue to be convertible into one share of Series B-1 Preferred Stock (subject to Regulatory Approval, to the extent applicable and required).

(b) Rights Plans. If the Company has a rights plan in effect with respect to the Common Stock on the Conversion Date, upon conversion of any shares of the Series B-2 Preferred Stock into Common Stock, Holders of such shares will receive, in addition to the shares of Common Stock, the rights under the rights plan relating to such Common Stock, unless, prior to the Conversion Date, the Conversion Rate set forth in the Series B-1 Preferred Stock Certificate of Designations is adjusted pursuant to Section 9(g) of the Series B-1 Preferred Stock Certificate of Designations, in which case, concurrently with the adjustment of such Conversion Rate, the Conversation Rate set forth in this Certificate of Designations shall be automatically adjusted such that such

Conversion Rate is the same as the Conversion Rate, as so adjusted, set forth in the Series B-1 Preferred Stock Certificate of Designations.

Section 10. Reorganization Events. (a) In the event that there occurs:

(i) any consolidation, merger or other similar business combination of the Company with or into another Person, in each case pursuant to which the Common Stock will be converted into cash, securities or other property of the Company or another Person;

(ii) any sale, transfer, lease or conveyance to another Person of all or substantially all of the property and assets of the Company;

(iii) any reclassification, recapitalization, or reorganization of the Common Stock into securities including securities other than the Common Stock; or

(iv) any statutory exchange of the outstanding shares of Common Stock for securities of another Person (other than in connection with a consolidation, merger or other business combination);

(any such event specified in this Section 10(a), a "Reorganization Event"); each share of Series B-2 Preferred Stock outstanding immediately prior to such Reorganization Event shall, without the consent of the Holders thereof and subject to Section 10(e), remain outstanding but shall become convertible, at the option of the Holders into the kind of securities, cash and other property receivable in such Reorganization Event by a holder (other than the counterparty to the Reorganization Event or an Affiliate of such other party) of the number of shares of Common Stock into which each share of Series B-2 Preferred Stock would then be convertible, determined for this purpose as if Regulatory Approval has been obtained (such securities, cash and other property, the "Exchange Property").

(b) In the event that holders of the shares of Common Stock have the opportunity to elect the form of consideration to be received in such transaction, the consideration that the Holders are entitled to receive upon conversion shall be deemed to be the types and amounts of consideration received by a plurality of the holders of the shares of Common Stock that did not make an affirmative election.

(c) The above provisions of this Section 10 shall similarly apply to successive Reorganization Events. If the provisions of Section 9 apply to any event or occurrence then this Section 10 will not apply.

(d) The Company (or any successor) shall, within 20 days of the consummation of any Reorganization Event, provide written notice to the Holders of such consummation of such event and of the kind and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section 10.

(e) The Company shall not enter into any agreement for a transaction constituting a Reorganization Event unless (i) such agreement provides for or does not interfere with or prevent (as applicable) conversion of the Series B-2 Preferred Stock into the Exchange Property in a manner that is consistent with and gives effect to this Section 10, and (ii) to the extent that the Company is not the surviving corporation in such Reorganization Event or will be dissolved in connection with such Reorganization Event, proper provision shall be made in the agreements governing such Reorganization Event for the conversion of the Series B-2 Preferred Stock into stock of the Person surviving such Reorganization Event or, in the case of a Reorganization Event described in Section 10(a)(ii), an exchange of Series B-2 Preferred Stock for the stock of the Person to whom the Company's assets are conveyed or transferred, having voting powers, preferences, and relative, participating, optional or other special rights as nearly equal as possible to those provided in this Certificate of Designations (and convertible into stock of the Person to whom the Company's assets are conveyed or transferred, having voting powers, preferences, and relative, participating, optional or other special rights as nearly equal as possible to those of the stock into which the Series B-2 Preferred Stock is convertible (determined for this purpose as if Regulatory Approval has been obtained)).

Section 11 Voting Powers. (a) Except as otherwise provided in this Certificate of Designations, the Holders will not have any voting rights, including the right to elect any directors, except voting rights, if any, required by law. Except as otherwise provided in Section 11(b), for any such matters pursuant to which applicable law requires the Holders to have the right to vote, each Holder will have one vote per share of Series B-2 Preferred Stock, whether at a meeting or by written consent.

(b) If Holders of Series B-2 Preferred Stock are entitled to vote together as a separate and single class with either Series B-1 Preferred Stock or other Parity Securities (other than any other class or series of Parity Securities that votes with the Common Stock as to the election of directors or otherwise), for purposes of determining the voting powers of the Holders of Series B-2 Preferred Stock, each Holder will be entitled to 1000 votes for each $1,000 of liquidation preference to which its shares of Series B-2 Preferred Stock are entitled. If Holders of Series B-2 Preferred Stock are entitled to vote together as a separate class with any other securities, each Holder will be entitled to the number of votes equal to the number of shares of Common Stock into which each such share of Series B-2 Preferred Stock is then convertible at the time of the related record date (or the time of the vote if no record date is fixed), determined for this purpose as if the Regulatory Approval has been obtained.

Section 12 Special Class Vote Matters. For so long as an aggregate of at least 6,250,000 shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock are issued and outstanding, in addition to any vote or consent of the stockholders of the Company required by law, NASDAQ rules, the Certificate of Incorporation or the By-laws, neither the Company nor any of its Subsidiaries will take any of the following actions, either directly or indirectly, whether by merger, consolidation or otherwise, following the Issue Date without having obtained the prior written consent or affirmative vote of the Holders of at least a majority of the then outstanding shares of the Series B-1 Preferred Stock and the Series B-2 Preferred Stock, voting together as a separate class,

either by written consent or by the affirmative vote of the Holders of at least a majority of the then outstanding shares of the Series B-1 Preferred Stock and the Series B-2 Preferred Stock, at a meeting called for that purpose, consenting or voting (as the case may be) together as a separate class:

(a) any grant, creation, authorization or issuance (or the increase in the authorized number) of any class or series of capital stock or any options, warrants, convertible securities or other rights of any kind to acquire or receive shares of capital stock of the Company, or the issuance, sale or other disposition by the Company of any shares of capital stock, or of any options, warrants, convertible securities or other such rights, held by the Company in treasury, other than in connection with (A) the exercise of employee options in accordance with their terms, or (B) the granting of equity based compensation to the extent approved by the Board of Directors;

(b) any consolidation or merger with or into any other entity, the consolidation or merger of any other entity with or into the Company, or any liquidation, dissolution or winding-up of the business and affairs of the Company, or the sale of all or substantially all of the Company's property or business or other assets or the sale of all or substantially all of the stock or assets of XM Satellite Radio, Inc., XM Satellite Radio Holdings, Inc. or Satellite CD Radio Inc.;

(c) except with respect to any sale or disposition of the Washington D.C. Property or in the ordinary course of business, any acquisition or disposition of assets, in each case, having a value of more than $10,000,000, or any series of related acquisitions or dispositions having a value in the aggregate of more than $20,000,000, in the aggregate;

(d) any sale or transfer of (including without limitation any spin-off, split-off or similar transaction with respect to) any equity security or ownership interests in any Company Subsidiary (as defined in the Investment Agreement) that at the relevant time is a material Company Subsidiary, any merger or consolidation of any such Company Subsidiary, or any liquidation, dissolution, or sale of substantially all the assets of any such Company Subsidiary, in each case other than any such transaction that would not result in such Company Subsidiary no longer being wholly-owned, directly or indirectly, by the Company; provided, however, that any Company Subsidiary that holds any FCC or other material license or any satellite contract or other material contract, or that holds any material assets, or that generates any material revenue, or that is otherwise material, shall constitute a material Company Subsidiary for purposes of this Section 12(d);

(e) any incurrence of indebtedness, or the assumption or guarantee of the obligations of any person, other than (i) the incurrence, assumption or guarantee of indebtedness not in excess of $10,000,000 per calendar year or (ii) to the extent approved by the Board of Directors of the Company prior to the entry of definitive documentation therefor, the incurrence of indebtedness to refinance, replace or restructure existing indebtedness in an amount not in excess of the principal (or, in the case of any securities

with original issuance discount, accreted value), plus premium, if any, and accrued interest on such existing indebtedness;

(f) conducting or engaging in any business in any material respect other than the business in which the Company and its Subsidiaries are engaged as of the date hereof and any business reasonably related or complementary thereto;

(g) amending, altering, repealing, or adding any provision to the Certificate of Incorporation (including, without limitation, this Certificate of Designations) or By-laws in a manner that adversely affects the powers, rights, privileges or preferences of the Holders of the Series B-1 Preferred Stock and/or the Series B-2 Preferred Stock;

(h) except as provided for in this Certificate of Designations, any increase or decrease in the total number of directors constituting the whole Board of Directors; and

(i) entering into an agreement for, or committing to agree to take, or consenting to, any of the foregoing actions.

Section 13. Fractional Shares. (a) No fractional shares of Common Stock will be issued as a result of any conversion of shares of Series B-2 Preferred Stock.

(b) In lieu of any fractional share of Common Stock otherwise issuable in respect of any conversion pursuant to Section 7 hereof, the Company shall pay an amount in cash (computed to the nearest cent) equal to the same fraction of the Closing Price of the Common Stock determined as of the second Trading Day immediately preceding the Conversion Date.

(c) If more than one share of the Series B-2 Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series B-2 Preferred Stock so surrendered.

Section 14. Reservation of Common Stock and Series B-1 Preferred Stock. (a) The Company shall at all times reserve and keep available out of its authorized and unissued Common Stock and Series B-1 Preferred Stock or shares acquired by the Company, solely for issuance upon the conversion of shares of Series B-2 Preferred Stock as provided in this Certificate of Designations, free from any preemptive or other similar rights, such number of shares of Common Stock and Series B-1 Preferred Stock as shall from time to time be issuable upon the conversion of all the shares of Series B-2 Preferred Stock then outstanding. The Company shall take all such corporate and other actions as from time to time may be necessary to ensure that all shares of Common Stock and Series B-1 Preferred Stock issuable upon conversion of shares of Series B-2 Preferred Stock at the applicable Conversion Rate, or at the rate of one share of Series B-1 Preferred Stock per share of Series B-2 Preferred Stock, as applicable, in effect from time to time will, upon issue, be duly and validly authorized and issued, fully paid and nonassessable and free of any preemptive or similar rights (determined for this purpose as

if Regulatory Approval has been obtained). For purposes of this Section 14, the number of shares of Common Stock and Series B-1 Preferred Stock that shall be deliverable upon the conversion of all outstanding shares of Series B-2 Preferred Stock shall be computed as if at the time of computation all such outstanding shares were held by a single Holder.

(b) Notwithstanding the foregoing, the Company shall be entitled to deliver upon conversion of shares of Series B-2 Preferred Stock, as herein provided, shares of Common Stock acquired by the Company (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as (i) any such acquired shares are free and clear of all liens, charges, security interests or encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders) and (ii) all such acquired shares have all the same attributes as any other share of Common Stock then outstanding, including without limitation any rights that may then be attached to all or substantially all of the Common Stock then outstanding pursuant to any stockholders' rights plan or similar arrangement.

(c) All shares of Common Stock or Series B-1 Preferred Stock delivered upon conversion of the Series B-2 Preferred Stock shall be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(d) Prior to the delivery of any securities that the Company shall be obligated to deliver upon conversion of the Series B-2 Preferred Stock, the Company shall use its reasonable best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(e) The Company hereby covenants and agrees that, if at any time the Common Stock shall be listed on The NASDAQ Global Select Market or any other national securities exchange or automated quotation system, the Company will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all the Common Stock issuable upon conversion of the Series B-2 Preferred Stock.

(f) Regulatory Matters. If any shares of Common Stock, Series B-1 Preferred Stock or any other property or securities that would be issuable upon conversion of shares of Series B-2 Preferred Stock require the approval of any governmental authority before such shares may be issued upon conversion, the Company, at the request and expense of the holder(s) of such Series B-2 Preferred Stock, will use its reasonable best efforts to cooperate with the holder(s) of such Series B-2 Preferred Stock to obtain such approvals. Neither the Company nor any its subsidiaries shall be required to take (or commit to take) any actions pursuant to this Section 14(f), if the Company determines, in good faith, that such actions would reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

Section 15 Equal Treatment. To the extent that the Company reclassifies, subdivides or combines the Series B-1 Preferred Stock, the Series B-2 Preferred Stock shall be reclassified, subdivided or combined on an equal per share basis.

Section 16. Replacement Certificates. The Company shall replace any mutilated Series B-2 Preferred Stock certificate at the Holder's expense upon surrender of that certificate to the Company. The Company shall replace certificates that become destroyed, stolen or lost at the Holder's expense upon delivery to the Company of satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may reasonably be required by the Company.

Section 17 Miscellaneous. (a) All notices referred to herein shall be in writing, and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given upon the earlier of receipt thereof or three Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, addressed: (i) if to the Company, to its office at 1221 Avenue of the Americas, 36th Floor, New York, New York 10020, Attention: Chief Financial Officer, or (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Company, or (iii) to such other address as the Company or any such Holder, as the case may be, shall have designated by notice similarly given.

(b) The Company shall pay any and all stock transfer and documentary stamp taxes that may be payable in respect of any issuance or delivery of shares of Series B-2 Preferred Stock, Series B-1 Preferred Stock or shares of Common Stock or other securities issued on account of Series B-2 Preferred Stock pursuant hereto or certificates representing such shares or securities. The Company shall not, however, be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Series B-2 Preferred Stock, Series B-1 Preferred Stock or Common Stock or other securities in a name other than that in which the shares of Series B-2 Preferred Stock with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any Person other than a payment to the registered holder thereof, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Company the amount of any such tax or has established, to the reasonable satisfaction of the Company, that such tax has been paid or is not payable.

(c) No share of Series B-2 Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Company, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated issued or granted; provided, however, that the Investment Agreement provides the Holder of the Series B-2 Preferred Stock with a participation right in the case of any issuance of new equity securities by the Company, subject to and in accordance with the terms and conditions set forth therein.

(d) The shares of Series B-2 Preferred Stock shall not have any voting powers, preferences or relative, participating, optional or other special rights, or

qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law.

(e) Adjustment of Shares Numbers. If, after the Issue Date, there is a subdivision, split, stock dividend, combination, reclassification or similar event ("Adjustment Event") with respect to any shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock, then upon the effectiveness of such Adjustment Event, the reference in Section 12 to a specific number of such shares shall automatically be adjusted proportionately, so that the Holders of such shares will retain the same rights under Section 12 immediately following the effectiveness of such Adjustment Event as they did immediately prior thereto.

IN WITNESS WHEREOF, SIRIUS XM RADIO INC. has caused this Certificate of Designations to be signed by its authorized corporate officer this 5th day of March, 2009

SIRIUS XM RADIO INC.

By: [signature]

Name: Patrick L. Donnelly

Title: Executive Vice President, General Counsel and Secretary

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
101 Constitution Avenue, NW / Suite 900 / Washington, DC 20001
Tel: 202.712.2800 Fax: 202.712.2836
www.nelsonmullins.com

Robert L. Hoegle
(Admitted in DC & NY)
Tel: 202.712.2816
Fax: 202.712.2836
bob.hoegle@nelsonmullins.com

April 20, 2009

Via E-Mail

Mr. John Giusti
Acting Bureau Chief
International Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Sirius XM Radio Inc.

Dear Mr. Guisti:

This is to confirm my oral discussions, on behalf of Liberty Media Corporation ("Liberty Media"), with the FCC staff regarding the recent transaction between Liberty Media and Sirius XM Radio Inc. ("Sirius") or their respective subsidiaries. Consistent with the Investment Agreement and the Certificates of Designations that we reviewed with the staff, Liberty Media and those parties defined as "Liberty Parties" in the Investment Agreement will not exercise *de facto* control over Sirius and have no intention of doing so. In the event that the facts and circumstances change in the future, Liberty Media will file those applications with the FCC, if any, that are necessary and appropriate.

Very truly yours,

Bob Hoegle

Robert L. Hoegle

RLH:kjk
cc: Paula Michele Ellison, Esquire
James R. Bird, Esquire

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Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

SIRIUS SATELLITE RADIO INC.

Sirius Satellite Radio Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies that:

1. The name of the Corporation is Sirius Satellite Radio Inc. The name under which the Corporation was originally incorporated is Satellite CD Radio, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on May 17, 1990;

2. The Board of Directors of the Corporation (the "Board of Directors") has duly adopted this amendment and restatement of the Certificate of Incorporation in accordance with the provisions of Sections 242 and 245 of the Delaware General Corporation Law; and

3. The Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the corporation is Sirius Satellite Radio Inc. (the "Corporation").

SECOND: The registered office and registered agent of the Corporation is The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

THIRD: The purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: (1) The total number of shares of all classes of stock which the Corporation shall have authority to issue is 2,550,000,000 shares, consisting of (1) 50,000,000 shares of preferred stock, par value $0.001 per share ("Preferred Stock"), and (2) 2,500,000,000 shares of common stock, par value $0.001 per share ("Common Stock").

(2) The Board of Directors is hereby expressly authorized to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers (if any) of the shares of such series, and the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series, by resolution or resolutions adopted by the Board of Directors providing for the issue of such series (a "Preferred Stock Designation"). The powers, preferences and relative,

participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then

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outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, without a separate vote of the holders of the Preferred Stock, or any series thereof, unless a vote of any such holders is required pursuant to any Preferred Stock Designation.

(3) Each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Except as otherwise required by law or as otherwise provided in any Preferred Stock Designation, the holders of the Common Stock shall exclusively possess all voting power.

FIFTH: The right to cumulate votes in the election of directors shall not exist with respect to shares of stock of the Corporation.

SIXTH: No preemptive rights shall exist with respect to shares of stock or securities convertible into shares of stock of the Corporation.

SEVENTH: The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The directors need not be elected by ballot unless required by the bylaws of the Corporation.

EIGHTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal the bylaws of the Corporation.

NINTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to such reservation.

TENTH: The Corporation is to have perpetual existence.

ELEVENTH: (1) A director of the Corporation shall not be held personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after the effective date of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

(2) The Corporation shall indemnify, in the manner and to the full extent permitted by law, any person (or the estate of any person) who was or is a party to, or is threatened to be made a party to, any threatened, pending or complete action, suit or proceeding,

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whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, limited liability company, partnership, joint venture, trust or other enterprise. The Corporation may, to the full extent permitted by law, purchase and maintain insurance on behalf of any such person against any liability which may be asserted against him or her. To the full extent permitted by law, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, and, in the manner provided by law, any such expenses may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding. The indemnification provided herein shall not be deemed to limit the right of the Corporation to indemnify any other person for any such expenses to the full extent permitted by law, nor shall it be deemed exclusive of any other rights to which any person seeking indemnification from the Corporation may be entitled under any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Any repeal or modification of the foregoing paragraphs by the stockholders of the Corporation shall not adversely affect any right or protection of a director, officer or employee of the Corporation existing at the time of such repeal or modification.

Sirius Satellite Radio Inc. does hereby further certify that this Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors and by the stockholders in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

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IN WITNESS WHEREOF, Sirius Satellite Radio Inc. has caused its corporate seal to be hereunto affixed and this certificate to be signed by Joseph P. Clayton, its President and Chief Executive Officer, this 4th day of March, 2003.

SIRIUS SATELLITE RADIO INC.

By: /s/ Joseph P. Clayton

Joseph P. Clayton
President and Chief Executive Officer

ATTEST:
/s/ Patrick L. Donnelly

Patrick L. Donnelly
Secretary

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EX-3.1 2 e64357exv3w1.htm EX-3.1: CERTIFICATE OF AMENDMENT OF THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

Exhibit 3.1

CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SIRIUS SATELLITE RADIO INC.

The undersigned officer of Sirius Satellite Radio Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY as follows:

FIRST: The name of the Corporation is Sirius Satellite Radio Inc.

SECOND: The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by changing Section (1) of the Article numbered "Fourth" so that, as amended, said Section of said Article shall be and read as follows:

"Fourth: (1) The total number of shares of all classes of stock which the Corporation shall have authority to issue is 4,550,000,000 shares, consisting of (1) 50,000,000 shares of preferred stock, par value $0.001 per share ("Preferred Stock"), and (2) 4,500,000,000 shares of common stock, par value $0.001 per share ("Common Stock")."

THIRD: The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

[Rest of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment as of this 28th day of July, 2008.

Sirius Satellite Radio Inc.

/s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Executive Vice President, General Counsel and Secretary

EX-3.3 2 dex33.htm EXHIBIT 3.3

Exhibit 3.3

CERTIFICATE OF AMENDMENT
OF THE
RESTATED CERTIFICATE OF INCORPORATION
OF
SIRIUS XM RADIO INC.

The undersigned officer of Sirius XM Radio Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY as follows:

FIRST: The name of the Corporation is Sirius XM Radio Inc.

SECOND: The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by changing Section (1) of the Article numbered "Fourth" so that, as amended, said Section of said Article shall be and read as follows:

> "Fourth: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 8,050,000,000 shares, consisting of (1) 50,000,000 shares of preferred stock, par value $0.001 per share ("Preferred Stock"), and (2) 8,000,000,000 shares of common stock, par value $0.001 per share ("Common Stock")."

THIRD: The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: The foregoing amendment shall be effective upon filing with the Secretary of State of the State of Delaware.

[Rest of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment as of this 18th day of December, 2008.

Sirius XM Radio Inc.

/s/ PATRICK L. DONNELLY
Name: Patrick L. Donnelly
Title: Executive Vice President, General Counsel and Secretary

[Signature Page to Charter Amendment]

EX-4.4 2 c58081_ex4-4.htm

Exhibit 4.4

CERTIFICATE OF AMENDMENT

OF THE

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

SIRIUS XM RADIO INC.

The undersigned officer of Sirius XM Radio Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY as follows:

FIRST: The name of the Corporation is Sirius XM Radio Inc.

SECOND: The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by changing Section (1) of the Article numbered "Fourth" so that, as amended, said Section of said Article shall be and read as follows:

"Fourth: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 9,050,000,000 shares, consisting of (1) 50,000,000 shares of preferred stock, par value $0.001 per share ("Preferred Stock"), and (2) 9,000,000,000 shares of common stock, par value $0.001 per share ("Common Stock")."

THIRD: The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: The foregoing amendment shall be effective upon filing with the Secretary of State of the State of Delaware.

[Rest of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment as of this 29th day of May, 2009.

Sirius XM Radio Inc.

/s/ Patrick L. Donnelley

Name: Patrick L. Donnelley
Title: Executive Vice President, General Counsel and Secretary

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Exhibit 3.2

AMENDED AND RESTATED BY-LAWS

OF

SIRIUS SATELLITE RADIO INC.

ARTICLE I.

STOCKHOLDERS

Section 1. Annual Meetings. The annual meeting of the stockholders of the corporation for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date, and at such time and place within or without the State of Delaware as may be designated from time to time by the Board of Directors.

Section 2. Special Meetings. Special meetings of the stockholders shall be called at any time by the Secretary or any other officer, whenever directed by not less than two members of the Board of Directors or by the Chief Executive Officer. The purpose or purposes of the proposed meeting shall be included in the notice setting forth such call.

Section 3. Notice of Meetings. Except as otherwise provided by law, notice of the time, place and, in the case of a special meeting, the purpose or purposes of each meeting of stockholders shall be delivered personally or mailed not more than sixty, nor less than ten, days prior thereto, to each stockholder of record entitled to vote at the meeting at such address as appears on the records of the corporation.

Section 4. Quorum. The holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by statute or by the Certificate of Incorporation; but if at any regularly called meeting of stockholders there shall be less than a quorum present, the stockholders present may adjourn the meeting from time to time without further notice other than announcement at the meeting until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if, after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled

to vote at the meeting.

Section 5. Meeting Procedures. The Chairman of the Board, or in the Chairman's absence or at the Chairman's direction, the Chief Executive Officer, or in the Chief Executive Officer's absence or at the Chief Executive Officer's direction, any officer of the corporation shall call all meetings of the stockholders to order and shall act as Chairman of such meeting. The Secretary of the corporation or, in such officer's absence, an Assistant Secretary shall act as secretary of the meeting. If neither the Secretary nor an Assistant Secretary is present, the Chairman of the meeting shall appoint a secretary of the meeting. Unless

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otherwise determined by the Board of Directors prior to the meeting, the Chairman of the meeting shall determine the order of business and shall have the authority in his or her discretion to regulate the conduct of any such meeting, including, without limitation, by imposing restrictions on the persons (other than stockholders of the corporation or their duly appointed proxies) who may attend any such meeting, whether any stockholder or stockholders' proxy may be excluded from any meeting of stockholders based upon any determination by the Chairman, in his or her sole discretion, that any such person has unduly disrupted or is likely to disrupt the proceedings thereat, and the circumstances in which any person may make a statement or ask questions at any meeting of stockholders.

Section 6. Proxies. At all meetings of stockholders, any stockholder entitled to vote thereat shall be entitled to vote in person or by proxy, but no proxy shall be voted after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for the stockholder as proxy pursuant to the General Corporation Law of the State of Delaware, the following shall constitute a valid means by which a stockholder may grant such authority: (1) a stockholder may execute a writing authorizing another person or persons to act for the stockholder as proxy, and execution of the writing may be accomplished by the stockholder or the stockholder's authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature; or (2) a stockholder may authorize another person or persons to act for the stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the judge or judges of stockholder votes or, if there are no such judges, such other persons making that determination shall specify the information upon which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to the preceding paragraph of this Section 6 may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Proxies shall be filed with the Secretary of the meeting prior to or at the commencement of the meeting to which they relate.

Section 7. Voting. When a quorum is present at any meeting, the vote of the holders of a majority in voting power of the stock present in person or represented by proxy and entitled to vote on the matter shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute, the Certificate of Incorporation or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 8. Record Date. In order that the corporation may determine the stockholders (a) entitled to notice of or to vote at any meeting of stockholders or any

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adjournment thereof, or (b) entitled to consent to corporate action in writing without a meeting, or (c) entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date (i) in the case of clause (a) above, shall not be more than sixty nor less than ten days before the date of such meeting, (ii) in the case of clause (b) above, shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors, and (iii) in the case of clause (c) above, shall not be more than sixty days prior to such action. If for any reason the Board of Directors shall not have fixed a record date for any such purpose, the record date for such purpose shall be determined as provided by law. Only those stockholders of record on the date so fixed or determined shall be entitled to any of the foregoing rights, notwithstanding the transfer of any such stock on the books of the corporation after any such record date is so fixed or determined.

Section 9. Stockholder List. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of meeting,

or, if not so specified, at the place where the meeting is to be held. The list shall also be produced at the time and kept at the place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 10. Judges of Election. The Board of Directors, in advance of all meetings of the stockholders, shall appoint one or more judges of stockholder votes, who may be stockholders or their proxies, but not directors of the corporation or candidates for office. In the event that the Board of Directors fails to so appoint judges of stockholder votes or, in the event that one or more judges of stockholder votes previously designated by the Board of Directors fails to appear or act at the meeting of stockholders, the Chairman of the meeting may appoint one or more judges of stockholder votes to fill such vacancy or vacancies. Judges of stockholder votes appointed to act at any meeting of the stockholders, before entering upon the discharge of their duties, shall be sworn faithfully to execute the duties of judge of stockholder votes with strict impartiality and according to the best of their ability and the oath so taken shall be subscribed by them. Judges of stockholder votes shall, subject to the power of the Chairman of the meeting to open and close the polls, take charge of the polls, and, after the voting, shall make a certificate of the result of the vote taken.

Section 11. Nominations, etc. (A) Annual Meetings of Stockholders. (1) Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the corporation's notice of meeting delivered pursuant to Article 1, Section 3 of these By-Laws, (b) by or at the direction of the Chairman of the Board or (c) by any stockholder of the corporation who is entitled to vote at the meeting, who complied with the notice procedures set forth in subparagraphs (2) and (3) of this paragraph (A) of this By-Law and who was a stockholder of record at the time such notice is delivered to the Secretary of the corporation.

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(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this By-Law, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, and, in the case of business other than nominations, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not less than seventy days nor more than ninety days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than twenty days, or delayed by more than seventy days, from such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the ninetieth day prior to such annual meeting and not later than the close of business on the later of the seventieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made; and provided further, that for purposes of the application of Rule 14a-4(c) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (or any successor provision), the date for notice specified in this paragraph (A)(2) shall be the earlier of the

date calculated as hereinbefore provided or the date specified in paragraph (c)(1) of Rule 14a-4. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the by-laws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner and (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner; (d) a representation that the stockholder intends to appear in person or by proxy at the meeting to propose such business or nomination; and (e) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (i) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (ii) otherwise to solicit proxies from stockholders in support of such proposal or nomination.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this By-Law to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least eighty days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this By-Law shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation.

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(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting pursuant to Article I, Section 2 of these By-Laws. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (a) by or at

the direction of the Board of Directors or (b) by any stockholder of the corporation who is entitled to vote at the meeting, who complies with the notice procedures set forth in this By-Law and who is a stockholder of record at the time such notice is delivered to the Secretary of the corporation. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder's notice as required by paragraph (A)(2) of this By-Law shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the ninetieth day prior to such special meeting and not later than the close of business on the later of the seventieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

(C) General. (1) Only persons who are nominated in accordance with the procedures set forth in this By-Law shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this By-Law. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this By-Law and, if any proposed nomination or business is not in compliance with this By-Law, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted.

(2) For purposes of this By-Law, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) For purposes of this By-Law, no adjournment or notice of adjournment of any meeting shall be deemed to constitute a new notice of such meeting for purposes of this Section 11, and in order for any notification required to be delivered by a stockholder pursuant to this Section 11 to be timely, such notification must be delivered within the periods set forth above with respect to the originally scheduled meeting.

(4) Notwithstanding the foregoing provisions of this By-Law, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this By-Law. Nothing in this By-Law shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

ARTICLE II.

BOARD OF DIRECTORS

Section 1. Election; Term; etc. The Board of Directors of the corporation shall consist of such number of directors, not less than three nor more than 15, as shall from time to

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time be fixed exclusively by resolution of the Board of Directors. The directors shall be elected at each annual meeting of stockholders and each director shall be elected to serve until the conclusion of the next succeeding annual meeting and until his or her successor shall be elected and qualify or until his or her earlier death, resignation or removal. Directors shall (except as hereinafter provided for the filling of vacancies and newly created directorships) be elected by the holders of a plurality of the voting power present in person or represented by proxy and entitled to vote. A majority of the total number of directors then in office (but not less than one-third of the number of directors constituting the entire Board of Directors) shall constitute a quorum for the transaction of business and, except as otherwise provided by law or by the corporation's Certificate of Incorporation, the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. Directors need not be stockholders.

Section 2. Vacancies. Unless otherwise required by law, newly created directorships in the Board of Directors resulting from an increase in the number of directors, and any vacancy occurring in the Board of Directors, may be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director; and the directors so chosen shall hold office until his or her successor shall be duly elected and qualify or until his or her earlier death, resignation or removal.

Section 3. Meetings. Meetings of the Board of Directors shall be held at such place within or without the State of Delaware as may from time to time be fixed by resolution of the Board or as may be specified in the notice of any meeting. Regular meetings of the Board of Directors shall be held at such times as may from time to time be fixed by resolution of the Board and special meetings may be held at any time upon the call of the Chairman of the Board or the Chief Executive Officer or one-third of the directors then in office (rounded to the nearest whole number), by oral or written notice (including, telegraph, telex or transmission of a telecopy, e-mail or other means of transmission), duly served on or sent or mailed to each director to such director's address, e-mail address or telecopy number as shown on the books of the corporation not less than twelve hours before the meeting. The notice of any meeting need not specify the purposes thereof. A meeting of the Board may be held without notice immediately after the annual meeting of stockholders at the same place at which such meeting is held. Notice need not be given of regular meetings of the Board held at times fixed by resolution of the Board. Notice of any meeting need not be given to any director who shall attend such meeting in person (except when the director attends a meeting for the sale purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened), or who shall waive notice thereof, before or after such meeting, in writing.

Section 4. Executive Committee. The Board of Directors may designate three or more directors to constitute an executive committee, one of whom shall be designated Chairman of such committee. The members of such committee shall hold such office until the next election of the Board of Directors and until their successors are elected and qualify. Any vacancy occurring in the committee shall be filled by the Board of Directors. Regular meetings of the committee shall be held at such times and on such notice and at such places as it may from time to time determine. The committee shall act, advise and aid the officers of the corporation in all matters concerning its interest and the management of its business, and shall generally perform such duties and exercise such powers as

may from time to time be delegated to it by the Board of Directors, and shall have authority to exercise all the powers of the Board of Directors, so far as may be permitted by law, in the management of the business and the affairs of the corporation whenever the Board of Directors is not in session or whenever a quorum of

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the Board of Directors fails to attend any regular or special meeting of such Board. Without limiting the generality of the foregoing grant of authority, the executive committee is expressly authorized to declare dividends, whether regular or special, to authorize the issuance of stock of the corporation and to adopt a certificate of ownership and merger pursuant to Section 253 or any successor provision of the Delaware General Corporation Law. The committee shall have power to authorize the seal of the corporation to be affixed to all papers which are required by the Delaware General Corporation Law to have the seal affixed thereto. The fact that the executive committee has acted shall be conclusive evidence that the Board of Directors was not in session at such time or that a quorum of the Board had failed to attend the regular or special meeting thereof.

The executive committee shall keep regular minutes of its transactions and shall cause them to be recorded in a book kept in the office of the corporation designated for that purpose, and shall report the same to the Board of Directors at their regular meeting. The committee shall make and adopt its own rules for the governance thereof and shall elect its own officers.

Section 5. Other Committees. The Board of Directors may from time to time establish other committees, to serve at the pleasure of the Board, which shall be comprised of such members of the Board and have such duties as the Board shall from time to time establish. Any director may belong to any number of committees of the Board. The Board may also establish such other committees with such members (whether or not directors) and such duties as the Board may from time to time determine.

Section 6. Written Consent. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writings and transmissions are filed with the minutes of proceedings of the Board of Directors.

Section 7. Chairman of the Board. The Board of Directors, after each annual meeting of stockholders, shall elect a Chairman of the Board. The Chairman of the Board need not be an officer of the corporation. The Chairman of the Board shall have such powers as specified in these By-Laws and such powers as may be assigned to him or her by a resolution of the Board of Directors. The Board of Directors may elect a new Chairman of the Board at any meeting of the Board.

Section 8. Teleconferences. The members of the Board of Directors or any committee thereof may participate in a meeting of such Board or committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section shall constitute presence in person at such a meeting.

Section 9. Compensation. The Board of Directors may establish policies for the compensation of directors and for the reimbursement of the expenses of directors, in each case, in connection with services provided by directors to the corporation.

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ARTICLE III.

OFFICERS

Section 1. Officers. The Board of Directors, after each annual meeting of the stockholders, shall elect officers of the corporation, including a Chief Executive Officer and a Secretary. The Board of Directors may also from time to time elect such other officers (including one or more Vice Presidents, a Treasurer, one or more Assistant Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers) as it may deem proper or may delegate to any elected officer of the corporation the power to appoint and remove any such other officers and to prescribe their respective terms of office, authorities and duties. Any Vice President may be designated Executive or Senior, or may be given such other designation or combination of designations as the Board of Directors may determine. Any two or more offices may be held by the same person.

Section 2. Term. All officers of the corporation elected by the Board of Directors shall hold office for such term as may be determined by the Board of Directors or until their respective successors are chosen and qualified. Any officer may be removed from office at any time either with or without cause by the affirmative vote of a majority of the members of the Board then in office, or, in the case of appointed officers, by any elected officer upon whom such power of removal shall have been conferred by the Board of Directors.

Section 3. Powers. Each of the officers of the corporation elected by the Board of Directors or appointed by an officer in accordance with these By-Laws shall have the powers and duties prescribed by law, by these By-Laws or by the Board of Directors and, in the case of appointed officers, the powers and duties prescribed by the appointing officer, and, unless otherwise prescribed by these By-Laws or by the Board of Directors or such appointing officer, shall have such further powers and duties as ordinarily pertain to that office. The Chief Executive Officer shall have the general power to direct the affairs of the corporation.

Section 4. Delegation. Unless otherwise provided in these By-Laws, in the absence or disability of any officer of the corporation, the Board of

Directors may, during such period, delegate such officer's powers and duties to any other officer or to any director and the person to whom such powers and duties are delegated shall, for the time being, hold such office.

ARTICLE IV.

CERTIFICATES OF STOCK

Section 1. Certificates. The shares of stock of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and, upon request, every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the Chairman of the Board of Directors, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the corporation, or as otherwise permitted by law, representing the number of shares registered in certificate form. Any or all the signatures on the certificate may be a facsimile.

Section 2. Transfers. Transfers of stock shall be made on the books of the corporation by the holder of the shares in person or by such holder's attorney upon surrender

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and cancellation of certificates for a like number of shares, or as otherwise provided by law with respect to uncertificated shares.

Section 3. Lost Certificates. No certificate for shares of stock in the corporation shall be issued in place of any certificate alleged to have been lost, stolen or destroyed, except upon production of such evidence of such loss, theft or destruction and upon delivery to the corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board of Directors in its discretion may require.

ARTICLE V.

CORPORATE BOOKS

The books of the corporation may be kept outside of the State of Delaware at such place or places as the Board of Directors may from time to time determine.

ARTICLE VI.

CHECKS, NOTES, PROXIES, ETC.

All checks and drafts on the corporation's bank accounts and all bills

of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, shall be signed by such officer or officers or agent or agents as shall be authorized from time to time by the Board of Directors. Proxies to vote and consents with respect to securities of other corporations owned by or standing in the name of the corporation may be executed and delivered from time to time on behalf of the corporation by the Chief Executive Officer, the President, or by such officers as the Board of Directors may from time to time determine.

ARTICLE VII.

FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of January in each year and shall end on the thirty-first day of December following.

ARTICLE VIII.

CORPORATE SEAL

The corporate seal shall have inscribed thereon the name of the corporation. In lieu of the corporate seal, when so authorized by the Board of Directors or a duly empowered committee thereof, a facsimile thereof may be impressed or affixed or reproduced.

ARTICLE IX.

AMENDMENTS

These By-Laws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors or of the stockholders, provided notice of the proposed change was given in the notice of the meeting of the stockholders or, in the case of a meeting of

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the Board of Directors, in a notice given not less than twelve hours prior to the meeting. Notwithstanding any other provisions of these By-Laws or any provision of law which might otherwise permit a lesser vote of the stockholders, the affirmative vote of the holders of at least 80 percent in voting power of all shares of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required in order for the stockholders to alter, amend or repeal Section 2 and Section 11 of Article I, or this second sentence of this Article IX of these By-Laws or to adopt any provision inconsistent with any of such Sections or with this sentence.

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EX-3.2 3 e64357exv3w2.htm EX-3.2: CERTIFICATE OF AMENDMENT OF THE AMENDED AND RESTATED BY-LAWS

Exhibit 3.2

AMENDMENT TO THE

AMENDED AND RESTATED BY-LAWS

OF

SIRIUS SATELLITE RADIO INC.

Sirius Satellite Radio Inc., a corporation organized and existing under the laws of the State of Delaware, in accordance with Article IX of its Amended and Restated By-Laws (the "By-Laws"), hereby inserts Article X of the By-Laws as follows:

ARTICLE X

POST-MERGER ACTIONS

"At any time prior to July 28, 2010 (i) any termination or replacement of either the Chief Executive Officer or Chairman of the Board of Directors as of July 28, 2008 (or such individual's successor) and (ii) any sale, transfer or other disposition of assets, rights or properties which are material, individually or in the aggregate, to the corporation (or the execution of any agreement to take any such action), shall require the prior approval of a majority of the Independent Directors (as defined in the NASDAQ MarketPlace Rules) serving on the Board of Directors."

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Dated: July 28, 2008

SIRIUS SATELLITE RADIO INC.

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Executive Vice President, General Counsel and Secretary

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 27, 2011 (May 25, 2011)

SIRIUS XM RADIO INC.

(Exact Name of Registrant as Specified in Charter)

Delaware	**001-34295**	**52-1700207**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

1221 Avenue of the Americas, 36th Fl., New York, NY	**10020**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: **(212) 584-5100**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.07. Submission of Matters to a Vote of Security Holders.

On Wednesday, May 25, 2011, we held our annual meeting of stockholders. At the annual meeting, stockholders voted on the matters disclosed in our definitive Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on April 14, 2011 (the "Proxy Statement"). The final voting results for each matter submitted to a vote of stockholders are as follows:

Item 1 — Election of Directors

At the annual meeting, the holders of our common stock elected the persons listed below as common stock directors.

	Votes Cast For	Votes Cast Against	Abstentions	Broker Non-Votes
Joan L. Amble	1,033,670,462	268,500,999	8,499,136	2,157,401,390
Leon D. Black	759,237,162	543,010,605	8,422,830	2,157,401,390
Lawrence F. Gilberti	1,073,332,626	228,670,153	8,667,818	2,157,401,390
Eddy W. Hartenstein	1,075,373,830	226,690,523	8,606,244	2,157,401,390
James P. Holden	1,076,452,675	225,661,160	8,556,762	2,157,401,390
Mel Karmazin	1,081,114,894	224,414,652	5,141,051	2,157,401,390
James F. Mooney	1,044,684,949	257,696,879	8,288,769	2,157,401,390
Jack Shaw	1,076,168,367	226,506,401	7,995,829	2,157,401,390

Our Convertible Perpetual Preferred Stock, Series B-1 (the "Series B-1 Preferred Stock"), does not have the right to vote with the holders of our common stock on the election of common stock directors. The holder of the Series B-1 Preferred Stock is entitled to designate and elect members of our board of directors pursuant to the Certificate of Designations of the Series B-1 Preferred Stock. The holder of the Series B-1 Preferred Stock has designated John C. Malone, Gregory B. Maffei, David J.A. Flowers, Carl E. Vogel and Vanessa A. Wittman to serve as members of our board of directors until their successors are duly elected and qualified.

Item 2 — Ratification of Appointment of KPMG LLP as Independent Registered Public Accountants

The holders of our common stock and our Series B-1 Preferred Stock, voting together as a single class, ratified the appointment of KPMG LLP as our independent registered public accountants.

Votes Cast For	Votes Cast Against	Abstentions
6,000,919,418	28,511,021	25,618,310

Item 3 — Advisory Vote on Executive Compensation

The holders of our common stock and our Series B-1 Preferred Stock, voting together as a single class, approved, in a non-binding advisory vote, the compensation paid to our named executive officers as disclosed in the Proxy Statement.

Votes Cast For	Votes Cast Against	Abstentions	Broker Non-Votes
3,842,151,766	40,842,198	14,653,395	2,157,401,390

Item 4 — Advisory Vote on the Frequency of Future Advisory Votes on Executive Compensation

The holders of our common stock and our Series B-1 Preferred Stock, voting together as a single class, in a non-binding advisory vote, voted on whether a stockholder vote to approve the compensation paid to our named executive officers should occur every one, two or three years as set forth in the table below.

1 Year	2 Years	3 Years	Abstentions	Broker Non-Votes
598,527,914	17,666,617	3,270,535,768	10,917,060	2,157,401,390

In light of such vote, and consistent with our recommendation, we intend to include an advisory stockholder vote to approve the compensation paid to our named executive officers every three years until the next required vote on the frequency of stockholder votes on the compensation of named executive officers. We are required to hold votes on frequency every six years.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SIRIUS XM RADIO INC.

By: /s/ Patrick L. Donnelly
Patrick L. Donnelly
Executive Vice President, General Counsel and Secretary

Dated: May 27, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 1, 2010 (May 27, 2010)

SIRIUS XM RADIO INC.

(Exact Name of Registrant as Specified in Charter)

Delaware	**001-34295**	**52-1700207**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

1221 Avenue of the Americas, 36th Fl., New York, NY	**10020**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: **(212) 584-5100**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Section 5.07 Submission of Matters to a Vote of Security Holders

On May 27, 2010, we held our annual meeting of stockholders. At the annual meeting, stockholders voted on the matters contained in our definitive Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on April 15, 2010 (the "Proxy Statement"). The final results for each matter submitted to a vote of stockholders are as follows:

Item 1 – Election of Directors

At the annual meeting, the holders of our common stock and our Series A Convertible Preferred Stock, voting together as a single class, elected the persons listed below as common stock directors.

	Votes Cast For	Votes Cast Against	Abstentions	Broker Non-Votes
Joan L. Amble	837,561,943	29,619,099	17,188,454	1,838,792,045
Leon D. Black	408,528,344	458,481,167	17,359,985	1,838,792,045
Lawrence F. Gilberti	682,957,065	184,293,489	17,118,942	1,838,792,045
Eddy W. Hartenstein	847,884,390	19,474,711	17,010,395	1,838,792,045
James P. Holden	684,519,658	183,118,792	16,731,046	1,838,792,045
Mel Karmazin	855,065,564	19,226,385	10,077,547	1,838,792,045
James F. Mooney	839,662,079	28,131,598	16,575,819	1,838,792,045
Jack Shaw	684,777,290	182,758,646	16,833,560	1,838,792,045

Our Convertible Perpetual Preferred Stock, Series B-1 (the "Series B-1 Preferred Stock"), does not have the right to vote with the holders of our common stock and Series A Convertible Preferred Stock on the election of common stock directors. The holder of the Series B-1 Preferred Stock is entitled to designate and elect members of our board of directors pursuant to the Certificate of Designations of the Series B-1 Preferred Stock. Currently, the holder of the Series B-1 Preferred Stock has designated John C. Malone, Gregory B. Maffei and David J.A. Flowers to serve as members of our board of directors until their successors are duly elected and qualified.

Item 2 – Adoption of Rights Plan

The holders of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, approved a short-term rights plan designed to preserve certain potential tax benefits.

	Votes Cast For	Votes Cast Against	Abstentions
Common Stock, Series A Convertible Preferred Stock and Series B-1 Preferred Stock, voting as a single class	3,392,831,756	70,146,313	8,368,189

Item 3 – Extend our Board of Directors Authority (through the Approval of an Amendment to our Certificate of Incorporation) to Effect a Reverse Stock Split and to Reduce the Number of Authorized Shares of Our Common Stock

The holders of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, and the holders of our common stock, voting as a separate class, also approved an amendment to our certificate of incorporation to (i) effect a reverse stock split of our common stock by a ratio of not less than one-for-two and not more than one-for-twenty-five at any time prior to June 30, 2011, with the exact ratio to be set at a whole number within this range to be determined by our board of directors in its discretion, and (ii) reduce the number of authorized shares of our common stock as set forth in the Proxy Statement.

	Votes Cast For	Votes Cast Against	Abstentions
Common Stock, Series A Convertible Preferred Stock and Series B-1 Preferred Stock, voting as a class	4,976,493,790	308,257,802	25,386,711
Common Stock, voting as a separate class	2,384,555,236	308,257,802	25,386,711

Item 4 – Ratification of Independent Registered Public Accountants

The holders of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, ratified the appointment of KPMG LLP as our independent registered public accountants.

	Votes Cast For	Votes Cast Against	Abstentions
Common Stock, Series A Convertible Preferred Stock and Series B-1 Preferred Stock, voting as a single class	5,250,561,396	29,477,606	30,099,301

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SIRIUS XM RADIO INC.

By: /s/ Patrick L. Donnelly

Patrick L. Donnelly
Executive Vice President, General Counsel and Secretary

Dated: June 1, 2010

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Application of	)	IBFS File Nos. SES-STA-20120320-00280
	)	SES-STA-20120320-00281
Liberty Media Corporation	)	SES-STA-20120320-00282
	)	SAT-STA-20120320-00053
For Consent to Transfer of *De Facto*	)	SAT-STA-20120320-00054
Control of Sirius XM Radio Inc.	)	SAT-STA-20120320-00055
	)	SAT-STA-20120320-00056
	)	
	)	ULS File Nos. 0005137812 and
	)	0005137854
	)	
	)	Experimental License File Nos. (TBD)
	)	

DECLARATION OF CRAIG TROYER IN SUPPORT OF
PETITION FOR RECONSIDERATION OF DISMISSAL OF APPLICATIONS
FOR CONSENT TO TRANSFER OF *DE FACTO* CONTROL

Craig Troyer hereby declares, upon knowledge and information, that:

1. I am the Deputy General Counsel of Liberty Media Corporation ("Liberty Media") and I am submitting this Declaration to the Federal Communications Commission in support of Liberty Media's Petition for Reconsideration of the dismissal of Liberty Media's applications seeking Commission consent to the transfer of *de facto* control of Sirius to Liberty Media.

2. Liberty Media currently holds 12,500,000 Series B-1 Preferred Shares of Sirius XM Radio, Inc. ("Sirius"). The 2009 Investment Agreement pursuant to which Liberty Media acquired those shares states that the Series B Preferred Shares represent, on an as-converted basis, approximately 40% of the total outstanding common shares of Sirius. The restrictions

on Liberty Media's corporate conduct and voting rights contained in Sections 4.1(c) and 4.9 of the Investment Agreement expired on March 6, 2012. Liberty Media currently appoints and elects five of thirteen directors on the Sirius Board of Directors.

3. In addition to the Series B Preferred Shares, Liberty Media purchased approximately 60,350,000 additional shares of Sirius common stock in open market purchases on May 8 and 9, 2012 at an aggregate cost of approximately $120 million. Liberty Media intends to continue purchasing additional shares of Sirius common stock in the open market, depending upon the price and other market conditions.

4. Liberty Media also recently entered into a forward purchase contract for 302,198,700 additional common shares of Sirius at an aggregate cost of approximately $649 million, the settlement date for which is July 11, 2012.

5. It is my understanding that the various ownership interests held by Liberty Media and described above represent approximately 46.17% of the total outstanding common shares of Sirius on an as-converted basis.

6. Liberty Media has determined that it should seek control of Sirius and will take action to obtain such control after approval of its Applications by the Commission.

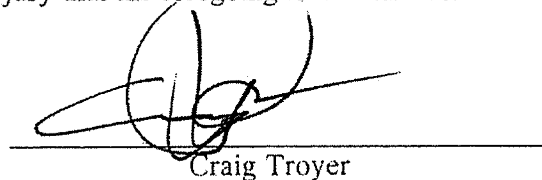
7. Although there are a number of different ways that Liberty Media may assert *de facto* control over Sirius, Liberty Media currently intends to convert approximately one-half (49.9%) of its Preferred Shares, which together with the additional common shares of Sirius that it has purchased in the open market and will acquire under the forward contract will total approximately 1,653,450,104 shares of common stock, or more than 32% of the total outstanding common shares of Sirius, making Liberty Media by far the single largest common shareholder of Sirius, while still retaining in excess of 6,250,000 Series B-1 Preferred Shares.

8. Following the conversion of such Preferred Shares, Liberty Media intends to take action as soon as practicable to cause the nomination and election of persons to Sirius' Board of Directors such that a majority of the persons serving on the Sirius Board of Directors will be persons nominated by Liberty Media. Liberty Media intends to vote all of its shares of common stock in favor of its nominees and to solicit proxies from other Sirius shareholders in support of the election of those nominees.

9. Liberty Media also intends to continue purchasing Sirius common shares in the open market, depending upon the price and other market conditions. Liberty Media may purchase sufficient additional common shares of Sirius to enable it assert *de jure* control over Sirius. Liberty Media could, upon acquisition of sufficient shares, convert all of its Preferred Shares and act by written consent to replace the entire Board of Directors immediately and thereby assume control of Sirius.

10. Attached hereto as Exhibit 1 is a copy of the Form 8-K filed by Sirius with the Securities and Exchange Commission on May 24, 2012 reporting the results of the election of directors at the 2012 annual meeting of shareholders.

11. I certify under penalty of perjury that the foregoing is true and correct.



Craig Troyer

May 30, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 24, 2012 (May 22, 2012)

SIRIUS XM RADIO INC.
(Exact Name of Registrant as Specified in Charter)

Delaware	**001-34295**	**52-1700207**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

1221 Avenue of the Americas, 36th Fl., New York, NY	**10020**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: **(212) 584-5100**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

[ ] Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

[ ] Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

[ ] Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2 (b))

[ ] Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4 (c))

Item 5.07. Submission of Matters to a Vote of Security Holders.

On Tuesday, May 22, 2012, we held our annual meeting of stockholders. At the annual meeting, stockholders voted on the matters disclosed in our definitive Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on April 11, 2012. The final voting results for the matters submitted to a vote of stockholders are as follows:

Item 1 – Election of Common Stock Directors

At the annual meeting, the holders of our common stock elected the persons listed below as common stock directors.

	Votes Cast For	Votes Cast Against	Broker Non-Votes
Joan L. Amble	1,314,936,993	152,661,673	1,629,665,622
Leon D. Black	512,411,779	955,186,887	1,629,665,622
Lawrence F. Gilberti	1,072,515,113	395,083,553	1,629,665,622
Eddy W. Hartenstein	1,417,014,485	50,584,181	1,629,665,622
James P. Holden	1,116,065,905	351,532,761	1,629,665,622
Mel Karmazin	1,407,785,376	59,813,290	1,629,665,622
James F. Mooney	1,349,614,296	117,984,370	1,629,665,622
Jack Shaw	1,115,576,299	352,022,367	1,629,665,622

Our Convertible Perpetual Preferred Stock, Series B-1 (the "Series B-1 Preferred Stock"), does not have the right to vote with the holders of our common stock on the election of common stock directors. The holder of the Series B-1 Preferred Stock is entitled to designate and elect members of our board of directors pursuant to the Certificate of Designations of the Series B-1 Preferred Stock. The holder of the Series B-1 Preferred Stock has designated John C. Malone, Gregory B. Maffei, David J.A. Flowers, Carl E. Vogel and Vanessa A. Wittman to serve as members of our board of directors until their successors are duly elected and qualified.

Item 2 – Ratification of Independent Registered Public Accountants

The holders of our common stock and our Series B-1 Preferred Stock, voting together as a single class, ratified the appointment of KPMG LLP as our independent registered public accountants.

Votes Cast For	Votes Cast Against	Abstentions
5,641,047,320	27,864,278	15,329,452

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SIRIUS XM RADIO INC.

By: /s/ Patrick L. Donnelly
Patrick L. Donnelly
Executive Vice President, General
Counsel and Secretary

Dated: May 24, 2012