

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Application of)
)

Liberty Media Corporation)
)

For Consent to Transfer of *De Jure*)
Control of Sirius XM Radio Inc.)
)

File Nos.

Docket No.

APPLICATION FOR CONSENT
TO TRANSFER OF *DE JURE* CONTROL

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**APPLICATION FOR CONSENT
TO TRANSFER OF *DE JURE* CONTROL**

Liberty Media Corporation (“Liberty Media”) respectfully submits this application for consent to the transfer of *de jure* control of Sirius XM Radio Inc. (“Sirius”) and the various space station, satellite earth station, wireless, experimental and other Federal Communications Commission (“FCC”) licenses and authorizations held by Sirius or its subsidiaries.¹ Liberty Media already owns 47.3% of the total outstanding shares of Sirius common stock on an as-converted basis and intends to purchase sufficient additional common shares of Sirius such that, upon conversion of the Preferred Shares that it already owns, Liberty Media will own more than 50% of the outstanding common shares of Sirius, thereby exercising *de jure* control over Sirius. As set forth herein, Liberty Media’s acquisition of *de jure* control over Sirius will serve the public interest, convenience and necessity.

¹ A list of the FCC licenses and authorizations held by Sirius and its subsidiaries is annexed as Schedule 1.

INTRODUCTION AND BACKGROUND

I. Liberty Media's Current Ownership Interest In Sirius

Liberty Radio, LLC ("Liberty Radio"), an indirect wholly-owned subsidiary of Liberty Media, entered into an Investment Agreement with Sirius, dated February 17, 2009 ("Investment Agreement"), 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.² 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 Preferred Shares, which are convertible at the discretion of Liberty Media into common shares of Sirius, represent approximately 40% of the total outstanding common shares of Sirius on an as-converted basis.

In addition to the Preferred Shares, as Liberty Media previously reported to the Commission, it purchased 60,350,000 additional shares of Sirius common stock in open market purchases on May 8 and 9, 2012 and had entered into a forward purchase contract for 302,198,700 additional common shares of Sirius, which purchase closed on July 11, 2012. Since then, Liberty Media purchased 89,970,000 additional shares of Sirius common stock in open market purchases on August 10, 13 and 14, 2012. Pursuant to a second forward purchase contract into which Liberty Media entered, Liberty Media intends to acquire 41,087,753 common shares on the settlement date, which is scheduled for October 14, 2012. Together with the Preferred Shares, Liberty Media presently owns 47.3% of the total

² Sirius filed the Investment Agreement with the Securities and Exchange Commission on March 10, 2009, as Exhibit 4.55 to its Form 10-K Report for the year ended December 31, 2008.

outstanding shares of Sirius (on an as-converted basis) and will own 48% of the total outstanding shares of Sirius (on an as-converted basis) after the October 14 settlement date.³

II. Liberty Media's Previous Applications for Consent to Transfer of *De Facto* Control

On March 20, 2012, Liberty Media filed a series of applications, seeking consent to the transfer of *de facto* control of Sirius to Liberty Media. See IBFS File Nos. SAT-STA-20120320-00053, SAT-STA-20120320-00054, SAT-STA-20120320-00055, SAT-STA-20120320-00056, SES-STA-20120320-00280, SES-STA-20120320-00281, SES-STA-20120320-00282, ULS File Nos. 0005137812 and 0005137854, Experimental License File Nos. 0007-EX-TC-2012, 0008-EX-TC-2012, 0009-EX-TC-2012.⁴ However, the International Bureau and Office of Engineering and Technology dismissed the Form 312 and Form 703 transfer of *de facto* control applications in response to a Petition to Dismiss or Deny filed by Sirius. See Letter dated May 4, 2012 to Robert L. Hoegle (DA 12-717) ("Bureau Decision"). The Bureau Decision concluded that Liberty Media had not established that it "intends to take actions, such as the 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. *Id.* at 3. The Wireless Telecommunications Bureau also dismissed the Form 603 transfer of *de facto* control applications, concluding that Liberty Media did not "sufficiently describe how and

³ Sirius reported that there were 3,833,253,534 shares of Sirius common stock outstanding on August 3, 2012. See *Sirius XM Radio Inc. Form 10-Q Quarterly Report as filed with the Securities and Exchange Commission on August 7, 2012.*

⁴ Because Sirius had refused to provide the passwords and other information required to utilize the FCC's electronic application filing systems, Liberty Media also filed a request to waive certain FCC rules to allow the submission of manual Form 603 and Form 703 transfer of control application forms. See Liberty Media Request for Waiver of Electronic Filing and Transferor/Licensee Signature Requirements for Applications for Consent to Transfer of *De Facto* Control.

when the proposed transaction is expected to occur.” See WTB Notices of Dismissal, Reference Nos. 5370148 & 5370149, dated May 10, 2012 (“WTB Dismissal Notices”).

On May 30, 2012, Liberty Media petitioned for reconsideration of the Bureau Decision and the WTB Dismissal Notices. See Liberty Media Petition for Reconsideration of Dismissal of Applications for Consent to Transfer of *De Facto* Control, filed May 30, 2012 (“Liberty Media Petition”). Among other things, the Liberty Media Petition informed the Commission of Liberty Media’s additional purchases of Sirius common stock and provided specific information regarding the actions that Liberty Media intended to take to assert *de facto* control over Sirius. Liberty Media stated that it intended to continue purchasing Sirius common shares in the open market, depending upon the market price and other conditions, and that it might purchase sufficient additional common shares of Sirius to enable Liberty Media to exercise *de jure* control over Sirius. See Liberty Media Petition at 16. Liberty Media further stated that, in the event that it decided to purchase sufficient shares to exercise *de jure* control over Sirius, it would amend the pending applications to seek consent to the transfer of *de jure* control if the Commission accepted and had not yet granted those applications.

III. Liberty Media’s Application for Consent to Transfer of *De Jure* Control

However, because the Bureau Decision and the WTB Dismissal Letters dismissed Liberty Media’s applications for consent to transfer of *de facto* control, there are no pending applications to amend. As a result, Liberty Media is filing this application for FCC consent to the transfer of *de jure* control of Sirius to Liberty Media and is simultaneously withdrawing the Liberty Media Petition. Liberty Media intends to purchase sufficient additional shares of Sirius common stock such that, upon conversion of its Preferred Shares, it will own more than 50% of the total outstanding shares of Sirius, giving it *de jure* control of Sirius including the

ability to control the membership of the Sirius Board of Directors. Liberty Media intends to purchase such additional common shares of Sirius as soon as practicable, subject to market conditions. However, Liberty Media will not convert its Preferred Shares in sufficient quantities to own more than 50% of the outstanding common stock of Sirius until the Commission grants this application. Consistent with its certifications in the accompanying applications, Liberty Media will have purchased sufficient shares of Sirius' common stock and will convert its Preferred Shares such that the transfer of control will be completed within 60 days of Commission consent.

APPLICATION

I. Description of the Parties

A. Liberty Media

Liberty Media, the applicant and proposed transferee, is a Delaware corporation holding ownership interests in a broad range of businesses. Liberty Media's consolidated wholly-owned subsidiaries include the following:

- Starz, LLC -- provides premium subscription video programming to U.S. multichannel video programming distributors, including cable operators, satellite television providers and telecommunications companies. Starz provides sixteen different programming networks, including the Starz channel and its five multiplex channels, the Encore channel and its seven multiplex channels, MoviePlex, IndiePlex, and RetroPlex, most of which are available in both standard definition and high definition feeds. Starz also licenses the subscription video on demand services, Starz on Demand, Encore on Demand, and MoviePlex on Demand.⁵
- Atlanta National League Baseball Club, Inc. -- owns and operates the Atlanta Braves Major League Baseball franchise.

⁵ On August 8, 2012, Liberty Media announced that it intends to effect a spinoff transaction that will result in the business of Starz, LLC, on the one hand, and the other businesses of Liberty Media, on the other hand, being held by two separate publicly traded corporations.

- TruePosition, Inc. -- develops and markets technology for locating wireless phones and other wireless devices, enabling wireless carriers, application providers and other enterprises to provide E-911 services domestically and other location-based services to mobile users both domestically and worldwide.

See Liberty Media Corporation Form 10-K for the Fiscal Year Ended December 31, 2011, filed with the Securities and Exchange Commission on Feb. 23, 2012 ("Liberty Media Form 10-K"), at I-4 to I-6.

Liberty Media also has ownership interests in entities that are accounted for as equity or cost investments, including the following:

- Live Nation Entertainment -- Live Nation is organized into five business segments: concert promotion and venue operations, sponsorship, ticketing solutions, e-commerce and artist management. Liberty Media held approximately 25.6% of Live Nation's outstanding common stock as of June 30, 2012.
- Barnes & Noble, Inc. -- Barnes & Noble, the world's largest bookseller and a Fortune 500 company, operates bookstores in 50 states and conducts its online business through BN.com. Liberty Media holds certain preferred shares of Barnes & Noble stock convertible into an approximate 17% equity interest in Barnes & Noble.

Liberty Media Form 10-K at I-3, I-7. Liberty Media also holds non-attributable ownership interests in other entities, including Crown Media Holdings, Inc. (3%), Sprint Nextel Corporation (1%), Time Warner Cable Inc. (1%), Time Warner Inc. (1%) and Viacom Inc. (1%).

On September 23, 2011, Liberty Interactive Corporation ("Liberty Interactive") completed the split-off of Liberty Media into a separate publicly traded company. Following the split-off, Liberty Media and Liberty Interactive operate as separate publicly-traded companies. Because Liberty Media and Liberty Interactive share certain executive officers and directors and there are certain overlapping ownership interests, they may be deemed to hold

attributable ownership interests in each other under the Commission's ownership attribution rules.

Liberty Interactive owns interests in subsidiaries and other companies that primarily are engaged in the video and online commerce industries. Liberty Interactive's consolidated subsidiaries include:

- QVC, Inc. -- markets and sells a wide variety of consumer products in the U.S. and several foreign countries, primarily by means of televised shopping programs and via the Internet through its domestic and international websites.
- Provide Commerce, Inc. -- operates an e-commerce marketplace of branded websites offering high quality, perishable products shipped directly from the supplier to the consumer.
- Backcountry.com, Inc. -- operates an e-commerce marketplace for outdoor adventure, cycling and action sports gear and clothing. Liberty Interactive holds an 87.5% ownership interest in Backcountry.

See Liberty Interactive Corporation, Form 10-K for the Fiscal Year Ended December 31, 2011, filed with the Securities and Exchange Commission on Feb. 23, 2012 ("Liberty Interactive Form 10-K"), at I-4 to I-6.

Liberty Interactive also has ownership interests in entities which are accounted for as equity or cost investments, including:

- HSN, Inc. -- HSN is a retailer and interactive lifestyle network offering an assortment of products through television home shopping programming and HSH.com. Liberty Interactive holds approximately 34% of HSN's outstanding common stock and has the right to nominate 20% of the members of HSN's board of directors.
- Expedia, Inc. -- Expedia is among the world's leading travel services companies, making travel products and services available to leisure and corporate travelers through a diversified portfolio of brands, including Expedia.com, Hotels.com, Venere.com, Vacations and a range of other domestic and international brands and businesses. Liberty Interactive holds an approximate 26% equity interest and 60% voting interest in

Expedia. Liberty Interactive has entered into governance arrangements pursuant to which Mr. Barry Diller, Chairman of the Board and Senior Executive Officer of Expedia, may vote Liberty Interactive's shares of Expedia subject to certain limitations.⁶

Liberty Interactive Form 10-K at I-8.

B. Sirius

Sirius is a publicly traded Delaware company and holds numerous FCC satellite, earth station, wireless and other authorizations as listed in Schedule 1. Sirius provides music, sports, entertainment, comedy, talk, news, traffic and weather audio channels in the United States on a subscription fee basis through two proprietary satellite radio systems -- the Sirius system and the XM system. The programming offered by Sirius includes the following: (1) music, including an extensive selection of genres ranging from rock, pop and hip-hop to country, dance, jazz, Latin and classical; (2) sports, including games/matches of the National Football League, Major League Baseball, NASCAR, National Basketball Association, National Hockey League, PGA Tour, and NCAA Division I football and basketball games; (3) talk and entertainment, including popular talk personalities such as Oprah Winfrey and Martha Stewart, comedy channels and religious programming; and (4) news and information, including a range of national, international and financial news from BBC World Service News, Bloomberg Radio, CNBC, CNN, FOX News, HLN, MSNBC, NPR and World Radio Network. *See Sirius XM Radio Inc. Form 10-K for the Fiscal Year Ended December 31, 2011, filed with the Securities and Exchange Commission on Feb. 9, 2012, at 1-2.* As of June 30, 2012, Sirius had

⁶ Effective December 20, 2011, Expedia completed the spin-off of TripAdvisor, Inc. ("TripAdvisor"), an online travel research company, as an independent public company. Liberty Interactive holds an approximate 26% equity interest and 60% voting interest in TripAdvisor. Liberty Interactive has entered into a stockholders' agreement pursuant to which Mr. Diller may vote Liberty Interactive's shares of TripAdvisor common stock, subject to certain limitations.

over 22,000,000 subscribers. *See Sirius XM Radio Inc. Form 8-K, filed with the Securities and Exchange Commission on Aug. 7, 2012, at Ex. 99.1.*

II. Grant of This Application Will Serve the Public Interest.

Under Section 310(d) of the Communications Act, the Commission must determine whether the transfer of *de jure* control of Sirius to Liberty Media will serve the public interest, convenience and necessity. *See* 47 U.S.C. §310(d). The public interest analysis requires the Commission to determine initially whether the transaction violates the Communications Act, other applicable statutes, or the Commission's rules. *See, e.g., News Corp. and The DIRECTV Group Inc., Transferors, and Liberty Media Corporation, Transferee, 23 FCC Rcd. 3265 (2008) ("Liberty Media-DIRECTV Approval Order"), at ¶22.* If the transaction does not violate a statute or regulation, the Commission will consider whether the transaction will result in public interest harms by frustrating or impairing the objectives or the implementation of the Communications Act. *Id.* The Commission then will balance the proposed transaction's potential public interest harms and potential public interest benefits. *Id.*

The public interest evaluation also encompasses the broad aims of the Communications Act, which generally include preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of information and services to the public, and managing spectrum in the public interest. *See, e.g., Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc., for Consent to Assign Licenses and Transfer Control of Licensees, 26 FCC Rcd. 4238 (2011), at ¶23 (citations omitted).* Under the Commission's balancing process, where the potential harms posed by a transaction are great, the potential benefits must be great. Conversely, where the potential harms are small or nonexistent, the potential benefits need only be of a

similar scale. See, e.g., *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., Assignors and Transferors, Comcast Corp. and Time Warner Inc., Assignees and Transferees*, 21 FCC Rcd. 8203 (2006), at ¶300.

The proposed transfer of *de jure* control of Sirius to Liberty Media does not violate the Communications Act or any Commission rules or policies. It does not implicate any aggregation, cross-ownership, multiple ownership, antitrust or similar restrictions in the Communications Act, the Commission's rules, or the antitrust statutes. Liberty Media's potential acquisition of control of Sirius will not adversely affect the "well-recognized public interest benefits" cited by the Commission in approving the Sirius-XM merger. See *Applications for Consent to the Transfer of Control of Licenses from XM Satellite Radio Holding Inc., Transferor, to Sirius Satellite Radio Holding, Inc., Transferee*, 23 FCC Rcd. 12348 (2008), at ¶¶83, 88.

The Media Bureau recently noted that the audio services "marketplace has evolved since the [Sirius-XM] merger closed, and consumers now have additional audio entertainment choices:"

Indeed, it appears that since the *Merger Order* new audio services have emerged as viable consumer alternatives, including smartphone Internet streaming applications that can be used in mobile environments such as automobiles equipped with user-friendly interfaces. For example, Pandora Media Inc....which provides audio services via Internet streaming and smartphone apps, has demonstrated remarkable growth in popularity in the years since the merger. Other examples of apps that have emerged as alternatives since the *Merger Order* include Rhapsody, Slacker, Last.fm, and iheartradio. Ford, Toyota, MINI, GM, Mercedes-Benz, and Hyundai are introducing Internet-based streaming services in their vehicles. In addition, data suggest that HD radio has increased since the merger.

See *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holding Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, 26 FCC Rcd. 10539

(Med. Bur. 2011), at ¶7 (notes omitted). Liberty Media's acquisition of *de jure* control of Sirius XM will not adversely affect competition in the audio services marketplace.

Liberty Media is qualified to control Sirius-XM. Liberty Media and its current and previous subsidiaries have held numerous classes of FCC licenses. The FCC approved Liberty Media's qualifications to exercise *de facto* control of DIRECTV in 2008. *See Liberty Media-DIRECTV Approval Order*.

In accordance with the provisions of the Investment Agreement, Liberty Media made a substantial investment in Sirius in 2009 in return for an equity interest in the company. The Commission has recognized that it is "axiomatic" that an investment should "fairly reflect the benefits that [the investor] expects to receive in return for its investment." *See, e.g., Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C*, 12 FCC Rcd. 6441 (WTB 1997), at ¶9. Likewise, the Commission has recognized that it is in the public interest for the Commission's transfer of control procedures to facilitate investment in entities licensed by the Commission and to permit investors to recognize the full value of their investments. *See, e.g., AmericaSky Corp., Application for Authority for Transfer of Control*, 11 FCC Rcd. 21134 (Int'l Bur. 1996), at ¶20. Therefore, Liberty Media respectfully requests grant of its application for transfer of *de jure* control of Sirius.⁷

⁷ In addition to holding the licenses identified in Schedule 1 hereto, Liberty Media understands that Sirius and/or its licensee subsidiaries have filed with the Commission certain pending applications and petitions and may file additional applications or petitions with the Commission in the future. Accordingly, Liberty Media requests that the Commission, in acting upon this application, include authority for the transfer of *de jure* control of: (1) any license or authorization issued to Sirius and/or its licensee subsidiaries during the pendency of this application prior to grant of the application or during the period specified in the Commission's rules for consummation following approval; and (2) any applications, petitions or other filings that have been filed by Sirius and/or its licensee subsidiaries and that are pending at the time of the consummation of the proposed transfer of *de jure* control.

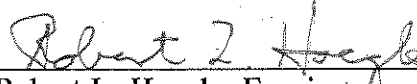
CONCLUSION

For the reasons set forth above, grant of this application will serve the public interest, convenience and necessity. Liberty Media respectfully requests that the Commission grant this application for consent to the transfer of *de jure* control of Sirius to Liberty Media, so that Liberty Media may convert a sufficient number of the Preferred Shares to own more than 50% of the outstanding common stock of Sirius.

Respectfully submitted,

LIBERTY MEDIA CORPORATION

BY:



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August 16, 2012

Schedule 1

FCC LICENSES & AUTHORIZATIONS

Sirius XM Radio Inc.

| Call Sign | Class | Expiration |
|------------------|----------------|-------------------|
| E040363 | Earth station | 10/19/2019 |
| E060276 | Earth station | 9/5/2021 |
| E060277 | Earth station | 10/3/2021 |
| E060363 | Earth station | 10/30/2021 |
| E080168 | Earth station | 2/17/2024 |
| E080185 | Earth station | 10/9/2023 |
| E110172 | Earth station | 2/15/2027 |
| E990291 | Earth station | 3/20/2026 |
| S2710 | Satellite | 8/25/2017 |
| WQKI298 | Business radio | 5/29/2019 |
| WQPD459 | Business radio | 4/13/2022 |
| WE2XSS | Experimental | |

XM Radio LLC

| Call Sign | Class | Expiration |
|------------------|---------------|-------------------|
| S2118 | Satellite | 5/31/2014 |
| S2119 | Satellite | 3/31/2014 |
| S2616 | Satellite | 12/15/2014 |
| S2617 | Satellite | 4/20/2013 |
| S2786 | Satellite | 12/2/2018 |
| E040204 | Earth station | 8/6/2019 |
| E000724 | Earth station | 1/22/2026 |
| E000158 | Earth station | 3/20/2026 |
| WQJP534 | Wireless | 10/1/2012 |
| WB2XCA | Experimental | 9/1/2012 |

Satellite CD Radio LLC

| Call Sign | Class | Expiration |
|------------------|--------------|-------------------|
| S2105 | Satellite | 2/11/2017 |
| S2812 | Satellite | |