

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
SIRIUS XM RADIO INC.)	File No. SAT-MOD-2015_____
)	
Application for Modification of FM-5 Satellite)	Call Sign S2710
Authorization)	
)	

APPLICATION FOR MODIFICATION OF AUTHORIZATION

Sirius XM Radio Inc. (“Sirius XM”), pursuant to Section 25.117 of the Commission’s rules,¹ hereby requests modification of its authorization for the FM-5 satellite (call sign S2710). Specifically, this application seeks authority to operate the FM-5 satellite at the 86.15° W.L. orbital location rather than the currently-licensed 96.0° W.L. orbital location. In addition, Sirius XM requests authority to continue operating on all authorized frequencies during the drift from 96.0° W.L. to 86.15° W.L. Finally, Sirius XM seeks to renew its license for an additional eight-year term, through August 25, 2025.

In accordance with the requirements of the Commission’s rules,² this application has been filed electronically as an attachment to FCC Form 312. Sirius XM provides the technical information relating to the proposed modification on Schedule S and in narrative form, pursuant to Section 25.114 of the Commission’s rules.³

¹ 47 C.F.R. § 25.117.

² 47 C.F.R. § 25.117(c).

³ *Id.* § 25.114.

I. SIRIUS XM REQUESTS AUTHORITY TO OPERATE THE FM-5 SATELLITE AT 86.15° W.L. AND CONTINUE TO OPERATE ON ALL AUTHORIZED FREQUENCIES DURING THE DRIFT FROM 96.0° W.L. TO 86.15° W.L.

Sirius XM is currently authorized to operate the FM-5 satellite at the 96.0° W.L. orbital location.⁴ As part of its transition from a hybrid constellation to a geostationary satellite constellation consisting of FM-5 and FM-6,⁵ Sirius XM seeks authority to relocate FM-5 to 86.15° W.L. To ensure continuous coverage and a smooth transition of Sirius XM's satellite architecture, Sirius XM plans for the FM-5 satellite to be relocated and operational at 86.15° W.L. prior to the retirement of the three non-geostationary satellites that comprise the Sirius legacy constellation.⁶ As such, Sirius XM requests authority to begin the drift of FM-5 in March 2016.

Sirius XM also seeks authority for FM-5 to continue operating on all authorized frequencies during the fourteen-day drift.⁷ The FM-5 satellite is currently authorized to transmit in the 2320.0-2332.5 MHz radio frequency bands (downlink) and receive in the 7050.5-7072.5

⁴ See *Policy Branch Information; Actions Taken*, Report No. SAT-00757, DA 11-272, File No. SAT-LOA-20100409-00072 (Feb. 11, 2011).

⁵ See *Policy Branch Information; Actions Taken*, Report No. SAT-00555, DA 08-2118, File No. SAT-MOD-20080521-00110 (Sept. 19, 2008).

⁶ These satellites are FM-1, FM-2, and FM-3, call sign S2105. See *Policy Branch Information; Actions Taken*, Report No. SAT-00664, DA 10-236, File No. SAT-MOD-20091119-00123 (Feb. 5, 2010). FM-6 will replace FM-1, FM-2, and FM-3 upon expiration of their useful lifetimes. The de-orbit of these satellites is currently anticipated to be between June and October 2016.

⁷ The Commission has previously allowed communications payloads to remain operational during drift to a new orbital location. See *Policy Branch Information; Actions Taken*, Report No. SAT-00668, DA 10-341, File No. SAT-STA-2009116-00146 (Feb. 26, 2010) (authorizing Intelsat to operate the C-band communications payload on the Intelsat 801 space station during the drift from the 31.5° W.L. orbital location to the 29.5° W.L. orbital location); *Application of XM Radio Inc. for Modification to Relocate XM-1, XM-2, and XM-3 to 85.150° W.L., 85.217° W.L., and 85.083° W.L., respectively*, IBFS File Nos. SAT-MOD-20070911-00125, SAT-AMD-20071113-00156, and SAT-AMD-20080129-00033 (stamp grant Feb. 14, 2008) (authorizing XM Radio to operate its communications payload during the drift from the 85.1° W.L. orbital location to the 85.083° W.L. orbital location).

MHz portion of the X-band (uplink).⁸ Upon completion of the relocation, FM-5 will continue to operate on these frequencies at the 86.15° W.L. orbital location.

II. SIRIUS XM REQUESTS EXTENSION OF THE FM-5 LICENSE TERM THROUGH AUGUST 25, 2025.

The FM-5 satellite commenced operations at the 96.0° W.L. orbital location on August 25, 2009, with an initial eight-year license term.⁹ The current term will expire on August 25, 2017. Sirius XM requests that the FM-5 license term be renewed for an additional eight-year term, which would expire on August 25, 2025.

FM-5 is capable of fulfilling its functions throughout the proposed additional license term. Specifically, the satellite is in good health: there is no single point of failure in the satellite's design, all subsystems are functioning normally, and there is no problem with either FM-5's telemetry, tracking, and command ("TT&C") links or its back-up TT&C links. Sirius XM has calculated that there is ample fuel onboard the FM-5 aircraft to continue providing reliable service through August 2025 and to move the satellite into disposal orbit.¹⁰ These calculations have been made assuming that the relocation request included in this application is granted.

III. GRANT OF THIS APPLICATION FOR MODIFICATION OF AUTHORIZATION IS IN THE PUBLIC INTEREST.

Grant of this application serves the public interest because it will allow Sirius XM to

⁸ See *Policy Branch Information; Actions Taken*, Report No. SAT-00438, DA 07-1790, File No. SAT-LOA-20060901-00096 (Apr. 20, 2007).

⁹ See File No. SAT-LOA-20060901-0096 (stamp grant April 16, 2007) (providing that the license term for FM-5 is eight years and will begin on the date Sirius XM certifies to the Commission that the satellite has been launched and put into operation); Letter from James S. Blitz to Marlene H. Dortch, Commencement of Operation of Sirius FM-5 (Call Sign S2710) (August 25, 2009).

¹⁰ See Attachment A (FM-5 Technical Description) at 34.

continue to provide exceptional satellite radio service, coverage and redundancy. Relocating FM-5 to 86.15° W.L. will allow Sirius XM to continue the adjustment and optimization of its satellite architecture and consequently serve the public interest through the continued provision of high quality service. Similarly, the ability to transmit on all authorized frequencies during FM-5's drift from 96.0° W.L. to 86.15° W.L. will enable Sirius XM to prevent any gaps in service that otherwise may result from the relocation.

Grant of this application will not increase the risk of harmful interference to any other satellite operators, either during the drift to or in operation at 86.15° W.L. The FM-5 satellite transmits in the 2320.0-2332.5 MHz downlink band, which Sirius XM won and paid for at auction, gaining the exclusive U.S. license in that spectrum. Thus, there are no domestic co-frequency users of the band used for FM-5 downlink transmissions. Similarly, the FM-5 satellite uplink uses the same X-band frequencies (7050.5-7072.5 MHz) as the present Sirius constellation from a primary earth station nearby the existing feeder link antennae. FM-5 TT&C is similarly accomplished "in band," in S-Band and X-band spectrum already licensed to Sirius XM. The requested drift to and operation at 86.15° W.L. presents no interference concerns with respect to the XM-3 and XM-5 satellites collocated at 85.15° W.L., as these satellites are operated by Sirius XM's wholly-owned subsidiary XM Radio LLC and will be coordinated internally by Sirius XM.¹¹ Finally, no satellites are located within a +/- .05° station-keeping box at the requested 86.15° W.L. location.¹² Sirius XM will coordinate with operators of current and future adjacent satellites to avoid the risk of physical collision.

Finally, grant of Sirius XM's license extension request serves the public interest by

¹¹ See *Policy Branch Information; Actions Taken*, Report No. SAT-00764, DA 11-480, File Nos. SAT-MOD-20101216-00263 and SAT-MOD-20101216-00264 (Mar. 11, 2011).

¹² See Attachment A at 32.

enabling Sirius XM to continue providing high-quality service using an existing satellite that has many years of useful life remaining. In this regard, grant of the license extension request will promote the efficient use of orbital resources. In addition, considering and granting the license extension request at the same time as Sirius XM's relocation request fosters administrative efficiency and minimizes strain on the Commission's resources.

For all of these reasons, grant of the proposed request to operate FM-5 at 86.15° W.L., continue operations during the drift, and renew the FM-5 license for an additional eight-year term serves the public interest.

IV. ITU FILINGS, COST RECOVERY AND INTERNATIONAL COORDINATION

Sirius XM will prepare the necessary documentation and assist the FCC with notifying the ITU of the change in the FM-5 orbital operating position and any further required coordination with Canada and Mexico. Sirius XM is aware that the ITU currently charges processing fees for satellite filings, and will submit to the Commission the required declaration accepting responsibility for ITU cost recovery.¹³ Sirius XM will prepare the necessary information, as may be required, for submission to the ITU so that it may initiate and complete the international coordination, due diligence, and notification process of its space stations, in accordance with ITU Radio Regulations.

The FM-5 satellite is also designed to, and will, operate in compliance with all relevant international and bilateral agreements between the United States and the Administrations of Canada and the United Mexican States regarding the provision of satellite radio in North America. The flux density requirements at the border and within those countries are unchanged by the proposed shift in position.

¹³ See 47 C.F.R. § 25.111(d).

IV. CONCLUSION

For the foregoing reasons, Sirius XM respectfully requests that the Commission promptly grant this Application for Modification of Authorization.

Respectfully submitted,

/s/ James S. Blitz

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Dated: December 11, 2015

Response to FCC Form 312 Question 39

In the ordinary course of business, we are a defendant or party to various claims and lawsuits, including those discussed below. These claims are at various stages of arbitration or adjudication.

Telephone Consumer Protection Act Suits. We are a defendant in several purported class action suits, which were commenced in February 2012, January 2013, April 2015 and July 2015, in the United States District Court for the Eastern District of Virginia, Newport News Division, the United States District Court for the Southern District of California, the United States District Court for the Northern District of Illinois and the United States District Court for the Middle District of Florida, respectively, that allege that we, or call center vendors acting on our behalf, made numerous calls which violate provisions of the Telephone Consumer Protection Act of 1991 (the “TCPA”). The plaintiffs in these actions allege, among other things, that we called mobile phones using an automatic telephone dialing system without the consumer’s prior consent or, alternatively, after the consumer revoked his or her prior consent. In one of the actions, the plaintiff also alleges that we violated the TCPA’s call time restrictions and in one of the other actions the plaintiff also alleges that we violated the TCPA’s do not call restrictions. The plaintiffs in these suits are seeking various forms of relief, including statutory damages of five-hundred dollars for each violation of the TCPA or, in the alternative, treble damages of up to fifteen-hundred dollars for each knowing and willful violation of the TCPA, as well as payment of interest, attorneys’ fees and costs, and certain injunctive relief prohibiting any violations of the TCPA in the future.

The plaintiffs in the cases titled, Francis W. Hooker v. Sirius XM Radio, Inc., No. 4:13-cv-3 (E.D. Va.), and Erik Knutson v. Sirius XM Radio Inc., No. 12-cv-0418-AJB-NLS (S.D. Cal.) have filed motions to certify several classes.

We have notified certain of our call center vendors of these actions and requested that they defend and indemnify us against these claims pursuant to the provisions of their existing or former agreements with us. We believe we have valid contractual claims against call center vendors in connection with these claims and intend to preserve and pursue our rights to recover from these entities.

These purported class action cases are titled Erik Knutson v. Sirius XM Radio Inc., No. 12-cv-0418-AJB-NLS (S.D. Cal.), Francis W. Hooker v. Sirius XM Radio, Inc., No. 4:13-cv-3 (E.D. Va.), Yefim Elikman v. Sirius XM Radio, Inc. and Career Horizons, Inc., No. 1:15-cv-02093 (N.D. Ill.) and Anthony Parker v. Sirius XM Radio, Inc., No. 8:15-cv-01710-JSM-EAJ (M.D. Fla). Additional information concerning each of these actions is publicly available in court filings under their docket numbers. We believe we have substantial defenses to the claims asserted in these actions, and we intend to defend them vigorously.

Pre-1972 Sound Recording Matters. In August 2013, SoundExchange, Inc. filed a complaint in the United States District Court for the District of Columbia alleging that we

underpaid royalties for statutory licenses during the 2007-2012 period in violation of the regulations established by the Copyright Royalty Board for that period. SoundExchange principally alleges that we improperly reduced our calculation of gross revenues, on which the royalty payments are based, by deducting non-recognized revenue attributable to pre-1972 recordings and Premier package revenue that is not “separately charged” as required by the regulations. SoundExchange is seeking compensatory damages of not less than \$50 million and up to \$100 million or more, payment of late fees and interest, and attorneys’ fees and costs.

In August 2014, the United States District Court for the District of Columbia granted our motion to dismiss the complaint without prejudice on the grounds that the case properly should be pursued before the Copyright Royalty Board rather than the district court. In December 2014, SoundExchange filed a petition with the Copyright Royalty Board requesting an order interpreting the applicable regulations. We believe we have substantial defenses to the claims asserted, and intend to defend this action vigorously.

This matter is titled SoundExchange, Inc. v. Sirius XM Radio, Inc., No.13-cv-1290-RJL (D.D.C.), and *Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services*, United States Copyright Royalty Board, No. 2006-1 CRB DSTR. Additional information concerning each of these actions is publicly available in filings under their docket numbers.

In addition, in August 2013 and September 2013, we were named as a defendant in three putative class action suits challenging our use and public performance via satellite radio and the Internet of sound recordings fixed prior to February 15, 1972 (“pre-1972 recordings”) under California, New York and/or Florida law. These cases are titled Flo & Eddie Inc. v. Sirius XM Radio Inc., No. 2:13-cv-5693-PSG-RZ (C.D. Cal.), Flo & Eddie, Inc. v. Sirius XM Radio Inc., No. 1:13-cv-23182-DPG (S.D. Fla.), and Flo & Eddie, Inc. v. Sirius XM Radio Inc., No. 1:13-cv-5784-CM (S.D.N.Y.) (collectively, the “Flo & Eddie cases”). In September 2015 and October 2015, we were named as a defendant, along with Pandora Media, Inc., in four putative class action suits challenging our use and public performance of pre-1972 recordings and, in two of the cases, alleging violations of the putative plaintiffs’ rights of publicity under California and New York law. These cases are titled Arthur and Barbara Sheridan v. Sirius XM Radio Inc. and Pandora Media, Inc., No. 4:15-cv-04081-VC (N.D. Cal.), Arthur and Barbara Sheridan v. Sirius XM Radio Inc. and Pandora Media, Inc., No. 1:15-cv-07056-GHW (S.D.N.Y.), Arthur and Barbara Sheridan v. Sirius XM Radio, Inc. and Pandora Media, Inc., No.2:33-av-00001 (D.N.J.), and Arthur and Barbara Sheridan v. Sirius XM Radio, Inc. and Pandora Media, Inc., No. 1:15-cv-09236 (E.D. Ill.) (collectively, the “Sheridan cases”). The plaintiffs in the Flo & Eddie and Sheridan cases purport to seek in excess of \$100 million in compensatory damages along with unspecified punitive damages and injunctive relief. In June 2015, we settled a separate suit brought by Capitol Records LLC, Sony Music Entertainment, UMG Recordings, Inc., Warner Music Group Corp. and ABKCO Music & Records, Inc. relating to our use and public performance of pre-1972 recordings for \$210 million which was paid in July 2015. These settling record

companies claim to own, control or otherwise have the right to settle with respect to approximately 85% of the pre-1972 recordings we have historically played.

Additional information concerning the Flo & Eddie and Sheridan cases is publicly available in court filings under their docket numbers. We believe we have substantial defenses to the claims asserted, and we are defending these actions vigorously.

With respect to certain matters described above under the captions “*Telephone Consumer Protection Act Suits*” and “*Pre-1972 Sound Recording Matters*”, we have determined, based on our current knowledge, that the amount of loss or range of loss, that is reasonably possible is not reasonably estimable. However, these matters are inherently unpredictable and subject to significant uncertainties, many of which are beyond our control. As such, there can be no assurance that the final outcome of these matters will not materially and adversely affect our business, financial condition, results of operations, or cash flows.

Other Matters. In the ordinary course of business, we are a defendant in various other lawsuits and arbitration proceedings, including derivative actions; actions filed by subscribers, both on behalf of themselves and on a class action basis; former employees; parties to contracts or leases; and owners of patents, trademarks, copyrights or other intellectual property. None of these matters, in our opinion, is likely to have a material adverse effect on our business, financial condition or results of operations.

Response to FCC Form 312 Question 40

Sirius XM Radio Inc. is a wholly-owned subsidiary of Sirius XM Holdings Inc. Sirius XM Holdings Inc. has no operations independent of Sirius XM Radio Inc.¹ As of December 31, 2014, Liberty Media Corporation (“Liberty Media”), a Delaware corporation, beneficially owned approximately 56% of the common stock of Sirius XM.² The address of Liberty Media is 12300 Liberty Boulevard, Englewood, CO 80112. Dr. John C. Malone, a United States citizen, owns shares of Liberty Media representing approximately 47% of the aggregate voting power of the company as of December 31, 2014.³ Dr. Malone’s business address is 12300 Liberty Boulevard, Englewood, CO 80112. No other entities or individuals own a 10% or greater direct or indirect interest in Sirius XM Holdings Inc.

The Executive Officers of Sirius XM Holdings Inc. are:

James E. Meyer, Chief Executive Officer
Scott Greenstein, President and Chief Content Officer
David J. Frear, Senior Executive Vice President and Chief Financial Officer
Dara Altman, Executive Vice President and Chief Administrative Officer
Jim Cady, Executive Vice President, Operations, Products and Connected Vehicle
Stephen R. Cook, Executive Vice President, Sales and Automotive
Patrick L. Donnelly, Executive Vice President, General Counsel and Secretary
Kathy Thomson, Executive Vice President and Chief Marketing Officer

The Directors of Sirius XM Holdings Inc. are:

Joan L. Amble
Anthony J. Bates
George W. Bodenheimer

¹ Securities and Exchange Commission Form 10-Q, Sirius XM Holdings Inc. (filed October 22, 2015) (available at http://www.sec.gov/Archives/edgar/data/908937/000156459015008553/siri-10q_20150930.htm).

² Securities and Exchange Commission Form 10-K, Liberty Media Corporation (filed February 26, 2015) (available at <http://www.sec.gov/Archives/edgar/data/1560385/000155837015000201/lvnt-20141231x10k.htm>). Liberty Media’s beneficial ownership in Sirius XM Holdings Inc. may change from time to time based upon a variety of factors, including purchases of common stock by Sirius XM Holdings Inc. pursuant to its stock repurchase program and agreements between Liberty Media and Sirius XM Holdings Inc. to repurchase shares of common stock held by Liberty Media. Sirius XM does not anticipate that any such transactions, either individually or in the aggregate, will have the effect of reducing Liberty Media’s beneficial ownership in Sirius XM Holdings Inc. below 50%.

³ *Id.*

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Gregory B. Maffei
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