

Approved by OMB

3060-0678

Date &amp; Time Filed:

File Number: ---

<b>APPLICATION FOR SATELLITE SPACE AND EARTH STATION AUTHORIZATIONS FOR TRANSFER OF CONTROL OR ASSIGNMENT FCC 312 MAIN FORM FOR OFFICIAL USE ONLY</b>	<b>FCC Use Only</b>
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**APPLICANT INFORMATION**

Enter a description of this application to identify it on the main menu:

Transfer of De Facto Control of XM Radio LLC's Earth Station Licenses to Liberty Media Corporation  
3/2012

<b>1-8. Legal Name of Applicant</b>	
Name: LIBERTY MEDIA CORPORATION	Phone Number: 720-875-5400
DBA Name:	Fax Number: 720-875-5382
Street: 12300 Liberty Boulevard	E-Mail: craig@libertymedia.com
City: Englewood	State: CO
Country: USA	Zipcode: 80112 -
Attention: Craig Troyer, Esq.	
<b>9-16. Name of Contact Representative</b>	
Name: Robert L. Hoegle, Esq.	Phone Number: 202-712-2816
Company: Nelson Mullins Riley & Scarborough LLP	Fax Number: 202-712-2836
Street: 101 Constitution Avenue, NW Suite 900	E-Mail: bob.hoegle@nelsonmullins.com
City: Washington	State: DC
Country: USA	Zipcode: 20001-
Attention:	Relationship: Legal Counsel

**CLASSIFICATION OF FILING**

<p>17. Choose the button next to the classification that applies to this filing for both questions a. and b. Choose only one for 17a and only one for 17b.</p> <p><input checked="" type="radio"/> a1. Earth Station</p> <p><input checked="" type="radio"/> a2. Space Station</p>	<p>(N/A) b1. Application for License of New Station</p> <p>(N/A) b2. Application for Registration of New Domestic Receive-Only Station</p> <p>(N/A) b3. Amendment to a Pending Application</p> <p>(N/A) b4. Modification of License or Registration</p> <p><input checked="" type="radio"/> b5. Assignment of License or Registration</p> <p><input checked="" type="radio"/> b6. Transfer of Control of License or Registration</p> <p>(N/A) b7. Notification of Minor Modification</p> <p>(N/A) b8. Application for License of New Receive-Only Station Using Non-U.S. Licensed Satellite</p> <p>(N/A) b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States</p> <p>(N/A) b10. Other (Please specify)</p>
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- e. Geostationary Space Station
- f. Non-Geostationary Space Station
- g. Other (please specify)

26. TYPE OF EARTH STATION FACILITY; Choose only one.

- Transmit/Receive
- Transmit-Only
- Receive-Only
- N/A

PURPOSE OF MODIFICATION

27. The purpose of this proposed modification is to: (Place an "X" in the box(es) next to all that apply.)

Not Applicable

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. 1.1308 and 1.1311, as an exhibit to this application. A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.  Yes  No

ALIEN OWNERSHIP Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30-34.

29. Is the applicant a foreign government or the representative of any foreign government?  Yes  No

30. Is the applicant an alien or the representative of an alien?  Yes  No  N/A

31. Is the applicant a corporation organized under the laws of any foreign government?  Yes  No  N/A

32. Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?  Yes  No  N/A

33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?  Yes  No  N/A

34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.

BASIC QUALIFICATIONS

35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules? If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.  Yes  No

36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explanation of circumstances.  Yes  No

37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explanation of circumstances.  Yes  No

38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus,  Yes  No

exclusive traffic arrangement or any other means or unfair methods of competition? If Yes, attach as an exhibit, an explanation of circumstances

39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party  Yes  No in any pending matter referred to in the preceding two items? If yes, attach as an exhibit, an explanation of the circumstances.

40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.

41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.  Yes  No

42a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.  Yes  No

42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station? Anik E-1 and E-2--Canadian licensed

43. Description. (Summarize the nature of the application and the services to be provided).  
This is one of a series of applications seeking FCC consent to the transfer of de facto control of Sirius XM Radio Inc. and its subsidiaries to Liberty Media Corporation.

CERTIFICATION

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

44. Applicant is a (an): (Choose the button next to applicable response.)

- Individual
- Unincorporated Association
- Partnership
- Corporation
- Governmental Entity
- Other (please specify)

45. Name of Person Signing Craig Troyer	46. Title of Person Signing Vice President & Deputy General Counsel
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47. Please supply any need attachments.

Attachment 1:	Attachment 2:	Attachment 3:
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**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION**

(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

**SATELLITE EARTH STATION AUTHORIZATIONS**  
**FCC Form 312 - Schedule A**  
**FOR OFFICIAL USE ONLY**

Select one of the following

- CONSENT TO TRANSFER OF CONTROL                       CONSENT TO ASSIGNMENT OF LICENSE  
 NOTIFICATION OF TRANSFER OF CONTROL OF RECEIVE ONLY REGISTRATION                       NOTIFICATION OF ASSIGNMENT OF RECEIVE ONLY REGISTRATION

A1. Name of Licensee (as shown on FCC 312 - Main Form)

Name: \_\_\_\_\_ Phone Number: XM Radio LLC  
 DBA Name: \_\_\_\_\_ Fax Number: FRN: 0020921250  
 Street: \_\_\_\_\_ E-Mail: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_  
 Country: \_\_\_\_\_ Zipcode: -  
 Attention: \_\_\_\_\_

A8. List Callsign(s) of station(s) being assigned or transferred

Callsign:	Callsign:	Callsign:	Callsign:	Callsign:	Callsign:	Callsign:	Callsign:
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A9. No. of station(s) listed  
 0 3 E000724 E040204 E000158

A10. Name of Transferor/ Assignor

Name: \_\_\_\_\_ Phone Number: Sirius XM Radio Inc.  
 Company: \_\_\_\_\_ Fax Number: FRN: 0006345730  
 Street: \_\_\_\_\_ E-Mail: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_  
 Country: \_\_\_\_\_ Zipcode: -  
 Attention: \_\_\_\_\_ Relationship: \_\_\_\_\_

A15. Name of Transferee/ Assignee

Name: LIBERTY MEDIA CORPORATION Phone Number: 720-875-5400  
 DBA Name: \_\_\_\_\_ Fax Number: 720-875-5382  
 Street: 12300 Liberty Boulevard E-Mail: \_\_\_\_\_  
 City: Englewood State: CO  
 Country: USA Zipcode: 80112 -  
 Attention: Craig Troyer, Esq.

A20. If these facilities are licensed, is the transferee / assignee directly or indirectly controlled by any other entity? If yes, attach as Exhibit E, a statement (including organizational diagrams where appropriate) which fully and completely identifies the nature and extent of control including: (1) the name, address, citizenship, and primary business of the controlling entity and any intermediate subsidiaries or parties, and (2) the names, addresses, citizenship, and the

Yes  
 No  
 N/A

percentages of voting and equity stock of those stockholders holding 10 percent or more of the controlling corporation's voting stock.

A21. If these facilities are licensed, attach as Exhibit F, a complete statement setting forth the facts which show how the assignment or transfer will serve the public interest.

#### CERTIFICATION

1. The undersigned, individually and for licensee, certifies that all attached exhibits pertain to Schedule A and all statements made in Schedule A of this application are true, complete and correct to the best of his/her knowledge and belief. The undersigned also certifies that any contracts or other instruments submitted herewith are complete and constitute the full agreement.
2. The undersigned represents that stock will not be delivered and that control will not be transferred until the Commission's consent has been received, but that transfer of control or assignment of license will be completed within 60 days of Commission consent. The undersigned also acknowledges that the Commission must be notified by letter within 30 days of consummation.

A22. Printed Name of Licensee (Must agree with A1)	A24. Title (Office Held by Person Signing)
A26. Printed Name of License Transferor / Assignor (Must agree with A10)	A28. Title (Office Held by Person Signing)
A26. Printed Name of License Transferee / Assignee (Must agree with A15) Liberty Media Corp.	A28. Title (Office Held by Person Signing) VP & Deputy General Counsel

#### FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0678), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to [PRA@fcc.gov](mailto:PRA@fcc.gov). PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember - You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0678.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

## EXHIBIT A

### FCC Form 312: Response to Question 40

Dr. John C. Malone, Chairman of the Board of Liberty Media Corporation ("Liberty Media"), beneficially owns shares representing the power to direct approximately 38.5 percent of Liberty Media's aggregate voting power. Dr. Malone is a United States citizen. Information regarding Liberty Media's Officers and Directors is set forth below:

#### Officers:

John C. Malone, Chairman of the Board  
Gregory B. Maffei, President and Chief Executive Officer  
Charles Y. Tanabe, Executive Vice President and General Counsel  
David J.A. Flowers, Senior Vice President and Managing Director, Alternative Investments  
Christopher W. Shean, Senior Vice President and Chief Executive Officer

#### Board of Directors:

John C. Malone  
Gregory B. Maffei  
Robert R. Bennett  
Donne F. Fisher  
M. Ian G. Gilchrist  
Evan D. Malone  
David E. Rapley  
Larry E. Romrell  
Andrea L. Wong

Liberty Media's Officers and Directors can be reached at the following address:

12300 Liberty Boulevard  
Englewood, Colorado 80112

## **EXHIBIT F**

### **FCC Form 312; Response to Question A21**

For a description of the public interest benefits of the proposed transfer of *de facto* control, please see the narrative description in the attached Application for Consent to Transfer of *De Facto* Control.



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

Application of	)	
	)	
Liberty Media Corporation	)	File Nos.
	)	
For Consent to Transfer of <i>De Facto</i>	)	Docket No.
Control of Sirius XM Radio Inc.	)	
	)	

APPLICATION 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*

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

_____ )	
Application of )	
Liberty Media Corporation )	File Nos.
For Consent to Transfer of <i>De Facto</i> )	Docket No.
Control of Sirius XM Radio Inc. )	
_____ )	

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

Liberty Media Corporation (“Liberty Media”) respectfully submits this application for consent to the transfer of *de facto* control of Sirius XM Radio Inc. (“Sirius”) and the various space station, satellite earth station, wireless, experimental and other Federal Communications Commission licenses and authorizations held by Sirius or its subsidiaries.<sup>1</sup> Liberty Media currently holds a substantial equity interest in Sirius pursuant to an Investment Agreement entered into in 2009. Certain restrictions set forth in the Investment Agreement, pursuant to which Liberty Media has not had *de facto* control over Sirius, expired on March 6, 2012.

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<sup>1</sup> A list of the FCC licenses and authorizations held by Sirius and its subsidiaries is annexed as Exhibit 1. Sirius has refused to provide the passwords, signatures and other information required to prepare and file standard electronic applications for consent to transfer of *de facto* control because it does not believe that the applications are necessary or appropriate. Consequently, Liberty Media is filing paper copies of: (a) FCC Form 603 regarding the wireless licenses held by Sirius; (b) FCC Form 703 regarding the experimental licenses and authorizations held by Sirius; and (c) a request for waiver of the Commission’s rules requiring electronic filing of those application forms and the inclusion of certain information and signatures from the transferor and/or licensee on those application forms. With respect to the satellite and international licenses held by Sirius, the International Bureau has advised that any applications for consent to transfer of *de facto* control being filed by Liberty Media without the Sirius passwords and other information should be filed electronically, using the Special Temporary Authorization (“STA”) application form, rather than paper applications, and Liberty Media is filing those applications today as well.

Consequently, Liberty Media is filing this application to obtain Commission consent to the transfer of *de facto* control of Sirius from the current shareholders of Sirius to Liberty Media. Liberty Media commits to abide by the restrictions set forth herein precluding its *de facto* control over Sirius until the Commission acts upon this application, the application is withdrawn, or circumstances change and Liberty Media advises the Commission of the changed circumstances.

### INTRODUCTION AND BACKGROUND

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.<sup>2</sup> The Investment Agreement recites that the Series B Preferred Shares would represent, on an as-converted basis, approximately 40% of the total outstanding common shares of Sirius. Investment Agreement at §3.2(c). The transaction, pursuant to which Liberty Radio acquired the preferred stock of Sirius, closed on March 6, 2009. To the best of Liberty Media’s knowledge, no other shareholder of Sirius owns 5% of its outstanding common stock.

Following the announcement of the transaction in 2009, the Commission staff informally inquired as to whether the transaction constituted a transfer of *de facto* control of Sirius to Liberty Media. At that time, counsel for Sirius and Liberty Media reviewed in detail

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<sup>2</sup> 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. 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.

with the Commission staff various provisions of the Investment Agreement, which precluded Liberty Media's *de facto* control of Sirius, as well as other provisions of the Investment Agreement and two related Certificates of Designation regarding the Series B-1 and B-2 Preferred Shares, respectively, which provided certain investor protections to Liberty Media.

The Investment Agreement includes certain provisions pursuant to which Liberty Radio agreed that "prior to the third anniversary of the Closing Date" (*i.e.* March 6, 2012) and subject to the provisions of Section 4.1(d), Liberty Radio and its Affiliates would not:

(1) "enter into or agree, offer, propose or seek...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'...to vote or seek to advise or influence any person or entity with respect to the voting of, any voting securities" of Sirius;<sup>3</sup> or

(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'...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," again 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."

Investment Agreement, §4.1(c).

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<sup>3</sup> The Agreement states 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." Investment Agreement, §4.1(c)(2). The Certificates of Designation regarding Liberty Media's Series B Preferred Shares provide that Liberty Media may designate a certain number of directors on the Sirius Board ("Preferred Stock Directors"), depending upon the number of Preferred Shares outstanding and the size of the Sirius Board. Currently, Liberty Media designates five of the 13 members of the Sirius Board of Directors.

The Investment Agreement also placed certain restrictions on Liberty Media's voting with respect to certain matters. Specifically, Liberty Media agreed that, prior to the third anniversary of the Closing:

(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" of Sirius; 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."

Investment Agreement, §4.9. However, Section 4.9 does not "restrict the Preferred Stock Directors from participating as members of the Board of Directors and any committees thereof in their capacity as such." *Id.* In addition, the Certificates of Designations provide that the Series B Preferred Shares confer no right to vote for Sirius directors other than the Preferred Stock Directors. *See* Certificates of Designation at §11.

After reviewing these provisions and certain investor protections afforded to Liberty Media under the terms 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. By letter dated April 20, 2009, counsel for Liberty Media confirmed that, consistent with the provisions of the Investment Agreement and the Certificates of Designation, "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." The letter further stated 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.” Letter from Robert L. Hoegle, Counsel for Liberty Media Corporation, to John Giusti, Acting Bureau Chief, International Bureau (Apr. 20, 2009).

The provisions of Section 4.1(c) and Section 4.9 of the Investment Agreement described above expired on March 6, 2012 (the third anniversary of the Closing Date of the transaction). Given the nature of those restrictions, their significance during the Commission staff’s informal inquiry in 2009, and the fact that they now have expired, Liberty Media is filing the current applications seeking consent to the transfer of *de facto* control of Sirius to Liberty Media.<sup>4</sup> However, until such time as the Commission acts upon the applications for consent to the transfer of control to Liberty Media, the applications are withdrawn, or circumstances change and Liberty Media advises the Commission of the changed circumstances, Liberty Media represents to the Commission that it will: (a) continue to abide by the provisions of Section 4.1(c) of the Investment Agreement set forth above at 3 (“Standstill Restrictions”); (b) either abstain from voting any common shares or vote such common shares in accordance with the provisions of Section 4.9 of the Investment Agreement (together, “Voting Restrictions”); and (c) refrain from acquiring shares of the Common Stock

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<sup>4</sup> Liberty Media initially sought to file applications for consent to the transfer of *de facto* control of Sirius on or before March 6, 2012, but was unable to obtain from Sirius the passwords and other information needed to file electronic applications. On March 6, 2012, at the request of the Commission staff, Liberty Media filed a letter with the Commission stating that it would abide by certain provisions of the Investment Agreement and other restrictions until Commission staff communicated with Liberty Media regarding the appropriate means to file transfer of control applications without the passwords from Sirius, Liberty Media filed applications for consent to transfer of *de facto* control, or Liberty Media further advised the Commission. Sirius now has confirmed that it will not provide the passwords and signatures necessary to prepare and file standard electronic transfer of control applications because it disagrees that such applications are necessary or appropriate. Consequently, after consulting the Commission staff, Liberty Media is filing paper applications and the current waiver requests concerning the Sirius wireless and experimental licenses, and electronic applications concerning the satellite and international licenses using the International Bureau’s electronic STA application form, which does not require a password from Sirius.

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%.

## APPLICATION

### A. Description of 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.
- Atlanta National League Baseball Club, Inc. -- owns and operates the Atlanta Braves Major League Baseball franchise.
- 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 which 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 holds approximately 21% of Live Nation's outstanding common stock as of December 31, 2011.
- 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 AOL Inc. (1%), 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 which 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 58% 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.<sup>5</sup>

Liberty Interactive Form 10-K at I-8.

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<sup>5</sup> 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 58% 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. *See Liberty Interactive Form 10-K at I-9.*

B. Description of Sirius.

Sirius is a publicly traded Delaware company and holds numerous FCC satellite, earth station, wireless and other authorizations as listed in Exhibit 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. As of December 31, 2011, Sirius had over 21 million subscribers. *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.*

C. The Limitations in Sections 4.1(c) and 4.9 of the Investment Agreement Have Expired.

As noted above, when Liberty Media acquired the Series B Preferred Shares of Sirius in 2009, the Commission staff had inquired informally as to whether that acquisition constituted a transfer of *de facto* control of Sirius to Liberty Media. After a review of the limitations placed upon Liberty Media in Sections 4.1(c) and 4.9 of the Investment Agreement, the staff concluded that Liberty Media did not have *de facto* control over Sirius, which Liberty

Media confirmed in the April 20, 2009 letter. Although those provisions expired on March 6, 2012, Liberty Media has committed to abide by the Standstill Restrictions and the Voting Restrictions described above and to 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.

Although not necessarily determinative, the size of a minority investor's ownership interest in a Commission licensee clearly is an "important element" in considering whether a party can exert *de facto* control over a Commission licensee. See *Benjamin L. Dubb*, 16 FCC 274, 289 (1951). For example, in the 2004 transaction between News Corporation Limited ("News Corp.") and Hughes Electronics Corporation ("Hughes"), News Corp. acquired a 34% interest in Hughes and its subsidiaries, including DirecTV. See *General Motors Corp. and Hughes Electronics Corp., Transferor, and the News Corporation Limited, Transferee*, 19 FCC Rcd. 473 (2004). The Commission noted that, as a result of the transaction: (1) no single shareholder would have a *de jure* controlling interest in Hughes either through a majority interest in voting stock or majority representation on the Hughes board; (2) News Corp. indirectly would control a 34% interest in Hughes; and (3) News Corp.'s former employee would serve as CEO of Hughes. *Id.* at ¶14. The FCC concluded that, "for purposes of the Communications Act," News Corp. would "exercise *de facto* control over Hughes" following completion of the transaction. *Id.*

The Commission reached a similar conclusion regarding *de facto* control in its 2008 order approving Liberty Media's acquisition of News Corp.'s ownership interest in DIRECTV. *See 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 Approval Order*"). Upon completion of that transaction, Liberty Media would hold a "40.36 percent interest in DIRECTV, making it the largest stockholder by far." *Id.* at ¶2. The Commission concluded that, "[b]y virtue of this interest, Liberty Media will have *de facto* control DIRECTV." *Id.* (emphasis added).

Here, the convertible Preferred Shares held by Liberty Media would constitute approximately 40% of the outstanding Common Stock of Sirius, by far the largest ownership interest held by any individual or entity. The remainder of the Sirius stock is widely held, such that no other person or entity holds 5% of the common stock of Sirius. Given the Commission's reliance in 2009 upon the provisions of Sections 4.1(c) and 4.9 of the Investment Agreement, the nature of those restrictions, and the fact that those restrictions expired on March 6, 2012, Liberty Media respectfully requests the Commission's consent to the transfer of *de facto* control of Sirius to Liberty Media.<sup>6</sup>

D. 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 facto* control of Sirius to Liberty Media will serve the public

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<sup>6</sup> In addition to holding the licenses identified in Exhibit 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 facto* 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 facto* control.

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., *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.*

At the outset, the proposed transfer of *de facto* 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 *de facto* 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 Holdings 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 facto* control of Sirius XM will not adversely affect competition in the audio services marketplace.

Liberty Media is qualified to hold a *de facto* controlling interest in 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.<sup>7</sup> *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

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<sup>7</sup> 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. Liberty Media has provided the requisite "transferee" information in this narrative, as well as in the paper applications regarding the Sirius wireless and experimental licenses to which this narrative is attached, and in the electronic STA application forms regarding the Sirius satellite and international licenses and authorizations, to which this narrative also is attached. Because the Commission evaluates a transfer of control application based on the qualifications of the transferee, and Sirius has refused to cooperate in the filing of the applications, Liberty Media has not completed the transferor and licensee portions of the application forms, except to provide the licensee name and FRN. However, the licensee and the transferor information should be a matter of public record at the Commission.

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 facto* control of Sirius.

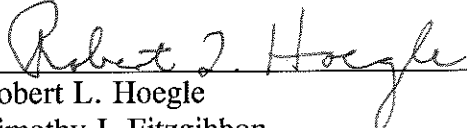
#### CONCLUSION

With convertible Preferred Shares equivalent to 40% of the outstanding common stock of Sirius, Liberty Media is by far the largest single shareholder of the Company, whose stock otherwise is widely held. The provisions of Sections 4.1(c) and 4.9 of the Investment Agreement, upon which the Commission relied in 2009 in concluding informally that Liberty Media did not have *de facto* control of Sirius, have expired. Grant of this application is in the public interest. For the reasons set forth above, Liberty Media respectfully requests that the Commission grant this application for consent to the transfer of *de facto* control of Sirius.

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

March 20, 2012

# **EXHIBIT 1**



## FCC Licenses & Authorizations

### Sirius XM Radio Inc.

Call Sign	Class	Expiration
WE2XOO <sup>8</sup>	Experimental	6/1/2012
WE2XSS <sup>1</sup>	Experimental	7/17/2012
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
SES-STA-20120119-00079	Earth Station -STA	3/22/2012
E080185	Earth station	10/9/2023
E110172	Earth station	2/15/2027
E990291	Earth station	3/20/2026
S2710	Satellite	8/25/2017
WQK1298	Business Radio	5/29/2019

### 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	12/02/2018
E040204	Earth Station	8/6/2019
SES-STA-20120119-00078	Earth Station -STA	3/22/2012
E000724	Earth Station	1/22/2026
E000158	Earth Station	3/20/2026
WB2XCA	Experimental	9/1/2012
WQJP534	Wireless	10/1/2012

### Satellite CD Radio LLC

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

<sup>8</sup> This authorization previously was held by Sirius Satellite Radio Inc., and the FCC's electronic database still reflects this entity as the licensee for this authorization. Sirius XM Radio Inc. has filed a notification of the licensee's name change, but the FCC's electronic database has not yet been updated to reflect this change.