

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Application of

Liberty Media Corporation

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

)  
) IBFS File Nos. SES-STA-20120320-00280

) SES-STA-20120320-00281

) SES-STA-20120320-00282

) SAT-STA-20120320-00053

) SAT-STA-20120320-00054

) SAT-STA-20120320-00055

) SAT-STA-20120320-00056

)  
) ULS File Nos. 0005137812 and  
) 0005137854

)  
) Experimental License File Nos. 0007-EX-TC-  
) 2012, 0008-EX-TC-2012, 0009-EX-TC-2012

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Federal Communications Commission  
Office of the Secretary

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To: International Bureau  
Office of Engineering and Technology  
Wireless Telecommunications Bureau

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

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## TABLE OF CONTENTS

Summary .....	i
Factual Background .....	2
Bureau Decision and WTB Dismissal Notices.....	4
Liberty Media Intends to Control Sirius.....	5
Argument.....	6
I.    The Bureau Decision Unlawfully Permits Sirius to Preclude the Filing of a “Proper” Application for Transfer of <i>De Facto</i> Control .....	7
II.   Liberty Media Sufficiently Expressed Its Intent in Filing Its Applications .....	9
III.  Liberty Media Has Increased Its Ownership Interest in Sirius and Intends to Assert <i>De Facto</i> and/or <i>De Jure</i> Control over Sirius .....	12
A. <i>Additional Purchase of Sirius Shares</i> .....	13
B. <i>Intent to Assert De Facto and/or De Jure Control</i> .....	14
1. <i>De Facto</i> Control .....	14
2. <i>De Jure</i> Control.....	16
Conclusion .....	17

## Summary

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

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

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

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

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

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To: International Bureau  
Office of Engineering and Technology  
Wireless Telecommunications Bureau

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

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

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

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

#### Factual Background

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

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

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

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

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

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

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

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

#### Bureau Decision and WTB Dismissal Notices

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

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<sup>3</sup> The WTB dismissed the Liberty Media applications without prejudice, stating that the applications “were incomplete with respect to required answers to questions, informational showings, or other matters of formal character....” *WTB Dismissal Notices* at 1.



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

#### Liberty Media Intends to Control Sirius

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

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

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

## Argument

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>9</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. In fact, Liberty Media and its affiliates already hold various Commission licenses, and the Commission previously approved Liberty Media’s qualifications to exercise *de facto* control of DIRECTV in 2008. *See Liberty Media-DIRECTV Order*. Moreover, the information withheld by Sirius from Liberty Media already is on file at the Commission and is irrelevant to the Commission’s public interest determination in the context of a transfer of control application.

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

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

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

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

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

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

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

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

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

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

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



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

A. *Additional Purchase of Sirius Shares*

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

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

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

1. *De Facto Control*

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

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

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

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

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

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

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

## 2. De Jure Control

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

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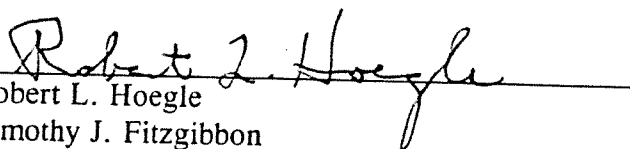
<sup>14</sup> Liberty Media had stated in its applications that it would abide by the Standstill Restrictions and the Voting Restrictions described in the applications and would refrain from acquiring shares of the Common Stock of Sirius that would result in Liberty Media's Beneficial Ownership (as defined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

Conclusion

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

Respectfully submitted,

LIBERTY MEDIA CORPORATION

BY:   
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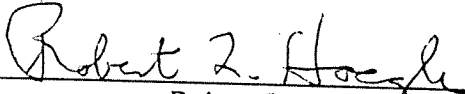
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May 30, 2012

CERTIFICATE OF SERVICE

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

Richard E. Wiley  
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Robert L. Hoegle