



PUBLIC NOTICE

Federal Communications Commission
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Report No. SPB-243

DA 12-1569
October 2, 2012

Liberty Media Corporation Seeks FCC Consent to Transfer *De Jure* Control of Sirius XM Radio, Inc.

APPLICATIONS ACCEPTED FOR FILING AND
PLEADING CYCLE ESTABLISHED

IB Docket No. 12-282

Petitions to Deny Due: November 1, 2012

Oppositions Due: November 13, 2012

Replies Due: November 20, 2012

I. INTRODUCTION

Liberty Media Corporation (“Liberty Media” or “Transferee”) has filed a series of applications (collectively, the “Application”) pursuant to section 310 of the Communications Act of 1934, as amended (“Communications Act”) and the Commission’s rules,¹ seeking approval to transfer *de jure* control of Sirius XM Radio Inc. and its subsidiaries (collectively “Sirius” or “Transferor”) to Liberty Media.² Sirius

¹ 47 U.S.C. § 310(d); 47 C.F.R. §§ 1.948(a), 5.79, 25.119(d).

² See Liberty Media Corporation, Application for Consent to Transfer of *De Jure* Control of Sirius XM Radio Inc., Narrative, IBFS File Nos. SAT-T/C-20120817-00133, -00134, -00135, -00136, SES-T/C-20120821-00776, -00777, -00792; ULS File Nos. 0005353974, 0005353880 and Experimental License File Nos. 0019-EX-TU-2012, 0020-EX-TU-2012 (filed Aug. 16, 2012). Previously, on March 20, 2012, Liberty Media filed a series of applications seeking Commission consent to the transfer of *de facto* control of Sirius to Liberty Media. Liberty Media Corporation, Application for Consent to Transfer of *De Facto* Control of Sirius XM Radio Inc., IBFS File Nos. SES-STA-20120320-00280, -00281, and -00282; SAT-STA-20120320-00054, -00055, -00056; Experimental License File Nos. 0007-EX-TC-2012, 0008-EX-TC-2012, 0009-EX-TC-2012 (filed Mar. 20, 2012). The Commission dismissed the applications in letters dated May 4, 2012 and May 10, 2012. Letter from Roderick Porter, Deputy Chief, International Bureau and Julius Knapp, Chief Engineer, Office of Engineering and Technology, to Robert L. Hoegle, Counsel for Liberty Media (May 4, 2012); Notice of Dismissal, Wireless Telecommunications Bureau, Reference Nos. 5370148, 5370149 (May 10, 2012). Liberty Media sought reconsideration of these actions, but withdrew that request contemporaneously with the filing of the Application. Liberty Media Corporation, Petition for Reconsideration of Dismissal of Applications for Consent to Transfer of *De Facto* Control, IBFS File Nos. SES-STA-20120320-00280, -00281, and -00282; SAT-STA-20120320-00054, -00055, -00056; Experimental License File Nos. 0007-EX-TC-2012, 0008-EX-TC-2012, 0009-EX-TC-2012 (filed May 30, 2012).

and its subsidiaries hold space station, satellite earth station, wireless and experimental licenses with the Commission.

II. THE PARTIES

A. The Transferor – Sirius XM Radio Inc.

Sirius, a publicly traded company organized under the laws of Delaware, provides music, sports, talk and entertainment and news and information programming via two satellite radio systems – the Sirius system and the XM system.³ Currently, Sirius owns and operates eight satellites, and holds earth station, wireless and experimental licenses.⁴ As of June 30, 2012, Sirius had over 22 million subscribers.⁵

B. The Transferee – Liberty Media Corporation

Liberty Media, a publicly traded company organized under the laws of Delaware, holds ownership interests in a variety of businesses. Liberty Media's consolidated, wholly owned subsidiaries include Starz, LLC, which provides subscription video programming to U.S. multichannel video programming distributors, including cable operators, satellite television providers and telecommunications companies; the Atlanta National League Baseball Club, Inc., which owns and operates the Atlanta Braves Major League Baseball franchise; and, TruePosition, Inc., which develops and markets technology for locating wireless phones and wireless devices.⁶ Liberty Media announced that it intends to effect a spinoff that will result in Starz, LLC being held as one publicly traded corporation and the other businesses of Liberty Media being held as a separate, publicly traded corporation.⁷ Dr. John C. Malone, Chairman of the Board of Liberty Media, beneficially owns shares representing the power to direct approximately 39% of Liberty Media's aggregate voting power.⁸

III. THE TRANSACTION

Liberty Media proposes to acquire *de jure* control of Sirius. Liberty Media currently holds 12,500,000 Series B-1 Preferred Shares that if converted to common stock would represent approximately 40% of the total outstanding shares of Sirius (on an as-converted basis).⁹ Based on the preferred stock and other common stock shareholdings at the time of filing, Liberty Media states that it owns the equivalent of 47.3% of the total outstanding shares of Sirius stock on an as-converted basis.¹⁰ The application states that Liberty Media purchased 60,350,000 shares of common stock in May 2012; 89,970,000 shares of common stock in July 2012; and 89,970,000 shares of common stock in August

³ Narrative at 8-9.

⁴ *Id.*

⁵ *Sirius XM Radio Inc.*, Current Report (Form 8-K), at Ex. 99.1 (Aug. 7, 2012).

⁶ Narrative at 5-6.

⁷ *Id.* at 5, n.5.

⁸ *See* Narrative, Exhibit A.

⁹ Narrative at 2.

¹⁰ Narrative at 2. Liberty Media's preferred shares are convertible to common stock.

2012.¹¹ Liberty Media states that it plans to acquire 41,087,753 shares under a forward purchase contract with a planned settlement date of October 14, 2012 at which time Liberty Media will own 48% of the total outstanding voting shares of Sirius (on an as converted basis).¹² Liberty Media states that within 60 days of Commission consent to transfer of control it will have purchased sufficient additional shares of Sirius' common stock and will convert its Preferred Shares so that it will own more than 50% of the outstanding shares of common stock of Sirius.¹³

IV. SECTION 310(D) APPLICATIONS:

The Application consists of seven FCC Form 312 applications, two Form 603 applications and two Form 703 applications seeking consent for the transfer of the following:

Part 25- Satellite Space Station and Earth Station Applications

Space Stations:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
SAT-T/C-20120817-00133	XM Radio LLC	S2118 <i>et al.</i>
SAT-T/C-20120817-00134	Sirius XM Radio Inc.	S2710
SAT-T/C-20120817-00135	Satellite CD Radio LLC	S2105
SAT-T/C-20120817-00136	Satellite CD Radio LLC	S2812

Earth Station:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
SES-T/C-20120821-00776	XM Radio LLC	E000158 <i>et al.</i>
SES-T/C-20120821-00777	Sirius XM Radio Inc.	E110172
SES-T/C-20120821-00792	Sirius XM Radio Inc.	E040363 <i>et al.</i>

Part 1 - Wireless License Applications

Wireless Licenses:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
0005353974	Sirius XM Radio Inc.	WQPD459 WQKI298

¹¹ Narrative at 2.

¹² Narrative at 2-3. On September 17, 2012, Liberty Media filed a letter with the Commission stating that it had converted 6,250,100 shares of its total 12,500,000 Series B-1 Preferred Shares to common shares. Liberty Media now owns 1,863,203,483 common shares of Sirius, representing approximately 32% of the outstanding common stock of Sirius, and 6,250,100 Series B-1 Preferred Shares. Letter from Robert L. Hoegle, Counsel for Liberty Media, to Mindel De La Torre, Chief, International Bureau (filed Sept. 17, 2012). Despite these substantial share holdings, no evidence has been presented to suggest that Liberty has exercised de facto control over Sirius and we find no basis in the record to infer any such action.

¹³ Narrative at 5. Liberty Media states that it will not convert its Preferred Shares to own more than 50% of the outstanding common stock of Sirius until the Commission grants the application. *Id.*

Part 5 – Experimental License Applications

Experimental Licenses:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
0019-EX-TU-2012	XM Radio LLC	WB2XCA
0020-EX-TU-2012	Sirius XM Radio Inc.	WE2XSS

V. WAIVER REQUEST FOR SIGNATURE REQUIREMENT

Liberty Media requests, pursuant to Sections 1.3 and 1.925 of the Commission’s rules,¹⁴ a waiver of Sections 1.917, 5.57 and 25.112(a) of the Commission’s rules, which require transferor and/or licensee signatures on application forms.¹⁵ In an Exhibit attached to the application, Sirius stated that it intends “to cooperate fully with the FCC in its evaluation of Liberty Media’s applications. Sirius XM has not signed the licensee and transferor portions of the applications because it is not in possession of all the facts required to make the certifications.”¹⁶ In response to a September 24, 2012 letter from the Commission,¹⁷ Sirius confirmed the accuracy of the facts in the Liberty Media application which are uniquely in its ability to certify.¹⁸ Under the circumstances and given that a certification is given to the best of a licensee’s knowledge and belief, little additional probative value would be added by Sirius’s signature and we therefore grant Liberty’s request for waiver.

VI. PROCEDURAL MATTERS

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all

¹⁴ 47 C.F.R. §§ 1.3, 1.925.

¹⁵ 47 C.F.R. §§ 1.917, 5.57, 25.112(a). Liberty Media’s Request for Waiver of Transferor/Licensee Signature Requirements for Applications for Consent to Transfer of *De Jure* Control, IBFS File Nos. SAT-T/C-20120817-00133, -00134, -00135, -00136, SES-T/C-20120821-00776, -00777, -00792; ULS File Nos. 0005353974, 0005353880 and Experimental License File Nos. 0019-EX-TU-2012, 0020-EX-TU-2012 (filed Aug. 16, 2012) (“Waiver Request”).

¹⁶ Waiver Request, Exhibit 1.

¹⁷ Letter from Robert G. Nelson, Chief, Satellite Division, International Bureau, to Jennifer Hindin, Counsel for Sirius XM (Sept. 24, 2012).

¹⁸ Letter from Jennifer D. Hindin, Counsel for Sirius XM to Robert G. Nelson, Chief, Satellite Division, International Bureau (Sept. 27, 2012).

¹⁹ 47 C.F.R. §§ 1.1200 *et seq.*

persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

The Applications have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective or not in conformance with the Commission's rules or policies. Final action on the Applications will not be taken earlier than thirty-one (31) days following the date of this Public Notice.²⁰

Interested parties must file petitions to deny or comments no later than **November 1, 2012**. Responses or oppositions to comments and petitions must be filed no later than **November 13, 2012**. Replies to such pleadings must be filed no later than **November 20, 2012**. All filings concerning matters referenced in this Public Notice should refer to **DA 12-1569, IB Docket No. 12-282**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

To allow the Commission to consider fully all substantive issues regarding the Applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.²¹ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.²²

Under the Commission's procedures for the submission of filings and other documents,²³ submissions in this matter may be filed electronically (*i.e.*, though ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

²⁰ See 47 U.S.C. § 309(b).

²¹ See 47 C.F.R. §1.45(c).

²² See *Id.*

²³ See *Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21483 (2001); see also *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, DA 01-2919, 16 FCC Rcd 22165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, DA 03-2730, 18 FCC Rcd 16705 (2003).

- Electronic Filers:²⁴ Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com or (202) 488-5563 (facsimile).

Additionally, filers may deliver courtesy copies by email or facsimile to the following Commission staff:

- (1) Lynne Montgomery, Satellite Division, International Bureau, at Lynne.Montgomery@fcc.gov or (202) 418-0748 (facsimile);
- (2) Marilyn Simon, Satellite Division, International Bureau, at Marilyn.Simon@fcc.gov or (202) 418-0748 (facsimile);
- (3) Jim Bird, Office of General Counsel, at Jim.Bird@fcc.gov or (202) 418-2822 (facsimile);
- (4) Neil Dellar, Transaction Team, Office of General Counsel, at Neil.Dellar@fcc.gov or (202) 418-1234 (facsimile);

²⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

- (5) Jeff Tobias, Mobility Division, Wireless Telecommunications Bureau, Jeff.Tobias@fcc.gov or (202) 418-1617
- (6) Marcia Glauber, Industry Analysis Division, Media Bureau, Marcia.Glauber@fcc.gov or (202) 418-7046.

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. The Applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

People with Disabilities: To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Lynne Montgomery, Satellite Division, International Bureau, at 202-418-2229.

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