



## 2008 ANNUAL REPORT AND PROXY STATEMENT

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#### Notice of Annual Meeting of Stockholders and Proxy Statement



May 5, 2009



Dear Fellow Stockholders:

The last year was marked by great challenges for our country and dramatic change across the economy. As the landscape changed in ways that few would have predicted, at SIRIUS XM we did our best work in the worst of times. We closed our merger and integrated the two companies in record time. We grew our revenues and subscribers at a time when most companies did not accomplish either. We introduced a new suite of packages to extend our combined offering to more listeners at more price points. We secured additional capital and added a prestigious new investor in credit markets that were among the tightest our economy has ever seen.

Despite the backdrop we are operating against, our company is strong. There is nothing to indicate that the coming months will be easy, but I am confident we will continue to meet any challenge and that we are well positioned to take advantage of opportunities.

### **Bringing Together the “Best of” From Both Companies**

Combining SIRIUS and XM was the right thing to do when we started the process over two years ago. It was an opportunity to deliver value to stockholders and offer more choices at better prices to consumers. Given the economic environment we find ourselves in today, our merger looks extremely wise and timely.

As the economy has softened, we have been able to leverage what we expect will be more than \$425 million in synergies for 2009 — a number that we expect to see grow through 2010 and beyond. The ability to introduce new programming packages — an option that would not have been available to us absent the merger — has opened new avenues for growth. At a time when many companies struggle to begin to streamline their operations and refine their product offerings, we have already done both and are reaping the benefits of the merger.

We moved quickly to integrate our teams. Senior management for the combined company was up and running within days of closing the merger. Our offering to advertisers has been streamlined to cover both

platforms and is being heavily marketed. As contracts with our vendors and others have come up, we have been able to realize efficiencies and are confident this trend will continue.

SIRIUS and XM have long been the hallmarks of the best in audio entertainment and one of the most exciting aspects of the merger has been the opportunity to bring new programming options to the market. Our long awaited “Best of” options, which allows listeners to access both the SIRIUS and XM platforms for additional \$4 a month, has been well received. This kind of organic growth is a great example of how our stockholders and listeners are benefiting from the merger.

In addition to “Best of” options, we introduced our a la carte programming option. We also have options for music lovers; new programming tailored for listeners who are focused sports, news and talk; and channel packages that are strictly family friendly. For our most devoted listeners, we now have an interoperable radio, the Mirge, which can deliver both platforms in their entirety through one device. The SIRIUS and XM \$12.95 per month packages remain our most popular options and, for pennies a day, continue to be a great value.

Significantly, many of these new packages are offered at prices that are below our standard subscription rates. As many consumers are becoming more economically sensitive, we are well-positioned to meet any household budget.

### **Delivering Meaningful Results**

Although we have not made all the gains that we would like to see, we have made incredible financial progress at SIRIUS XM.

We posted positive pro forma adjusted income from operations in the fourth quarter for the first time in the history of SIRIUS and XM. This is dramatic considering we had a loss of \$224 million one year ago.

Pro forma full year 2008 revenue was up 18% over 2007 — \$2.4 billion compared with \$2.1 billion for

the year ended December 31, 2007. Pro forma fourth quarter 2008 revenue was \$644 million, up 16%, while total cash operating expenses declined by 22%, proving our focus on improving profitability. Our subscribers grew by 10% from 2007 to more than 19 million at the end of 2008. In 2008, we also increased the factory installation of satellite radio in new vehicles. Over the course of 2007, we estimate that satellite radio was factory installed in approximately 32% of the vehicles built for sale in the United States. In contrast, over the course of 2008, approximately 45% of those vehicles included satellite radio. Given the current environment, we were pleased to see our monthly self-pay customer churn rate was 1.8% in the fourth quarter 2008, as compared with 1.7% in the fourth quarter 2007.

### **Successfully Navigated 2009 Liquidity Challenges**

One of our most significant accomplishments was one that just last year would have been routine for any company like ours. The closing of our merger in July 2008 necessitated refinancing much of SIRIUS and XM's debt. The credit markets were tightening, at the same time opponents of our merger were threatening to prevent our closing, so we moved quickly to refinance approximately \$1.250 billion of XM debt. But, even after these successful refinancings, we were left with over \$1 billion of debt maturing in 2009.

The credit markets then deteriorated to the point that very few companies had any access to capital. In a show of extraordinary confidence in our future, we were able to execute an agreement with Liberty Media, which strengthened our capital structure and enhanced our financial flexibility. With this investment, we have addressed the uncertainty related to our debt maturing in 2009, allowing us to turn our focus to back to our business and to providing our subscribers with the great content and innovative programming they know and love.

Liberty Media is a strong partner and we are pleased to welcome their investment and new colleagues to our Board of Directors. In addition to capital, they bring an extraordinary amount of expertise in the media industry.

### **Looking to the Future**

We are following events in the auto market very closely. The decline in auto sales is concerning. However, cars are still being sold and, as a result of the merger, we have penetration into every major auto manufacturer. We are working closely with each of the major automakers and exploring new options to entice

more drivers to add satellite radio to their auto purchase. We are also looking at pre-owned vehicles as a source for additional subscribers, and are focusing our efforts to be successful in that channel.

The retail aftermarket, including direct sales to new and existing customers, continues to be an important source of subscribers for us. We are determined to use our experience in this market to develop products and messages that attract subscribers. In addition, our video, navigation and traffic services have been very well received and are continuing to garner interest from consumers and automakers. We are also excited about the iPhone application we are introducing shortly. The iPhone app is slick, easy to use, adds to our exposure to a new large consumer audience, and broadens access to our great content.

Whether it is in the car, home, office or while on the go, as consumer confidence returns and spending increases, we believe that SIRIUS XM is well-poised for success. Given the new reality we are operating in, when measured by subscribers, we are still one of the largest subscription media businesses in the U.S. We have a first-rate management team; exclusive programming offered through innovative packages; operations that are increasingly efficient; and the financial structure we need to be successful.

Our accomplishments in the last year are a result of the passion and dedication of our employees. They have seamlessly navigated a great deal of change and have done so while continuing to put our valued subscribers first. We are incredibly grateful.

Likewise, on behalf of the Board of Directors, I'd like to thank you, our stockholders, for your support. We appreciate your confidence and hope to see it rewarded in an improved share price. The last year was not without its challenges, but I believe we have demonstrated our company's resilience and that we will see the benefits.

I hope you share my confidence in what lies ahead for SIRIUS XM.

Sincerely,



MEL KARMAZIN  
CEO  
SIRIUS XM Radio

## Special Note Regarding Forward-Looking Statements

*The following cautionary statements identify important factors that could cause our actual results to differ materially from those projected in forward-looking statements made in this Annual Report and Proxy Statement and in other reports and documents published by us from time to time. Any statements about our beliefs, plans, objectives, expectations, assumptions, future events or performance are not historical facts and may be forward-looking. These statements are often, but not always, made through the use of words or phrases such as “will likely result,” “are expected to,” “will continue,” “is anticipated,” “estimated,” “intend,” “plan,” “projection” and “outlook.” Any forward-looking statements are qualified in their entirety by reference to the factors discussed throughout reports and documents published by us from time to time.*

*Among the significant factors that could cause our actual results to differ materially from those expressed in the forward-looking statements are:*

- the substantial indebtedness of SIRIUS, XM Holdings and XM, and the need to refinance substantial portions of the SIRIUS, XM Holdings and XM debt in the near term, which, in the current economic environment, may not be available on favorable terms, or at all;*
- the possibility that the benefits of the July 2008 merger with XM Holdings may not be fully realized or may take longer to realize; and the risks associated with the undertakings made to the FCC and the effects of those undertakings on the business of XM and SIRIUS in the future;*
- the useful life of our satellites, which have experienced component failures including, with respect to a number of satellites, failures on their solar arrays, and, in certain cases, are not insured;*
- our dependence upon automakers, many of which have experienced a dramatic drop in sales and are in financial distress, and other third parties, such as manufacturers and distributors of satellite radios, retailers and programming providers; and*
- the competitive position of SIRIUS and XM versus other forms of audio and video entertainment including terrestrial radio, HD radio, internet radio, mobile phones, iPods and other MP3 devices, and emerging next-generation networks and technologies.*

*Because the risk factors referred to above could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made by us or on our behalf, you should not place undue reliance on any of these forward-looking statements. In addition, any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement or statements to reflect events or circumstances after the date on which the statement is made, to reflect the occurrence of unanticipated events or otherwise. New factors emerge from time to time, and it is not possible for us to predict which will arise or to assess with any precision the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.*

## Management's Discussion and Analysis of Financial Condition and Results of Operations

*(All dollar amounts referenced in this Section are in thousands, unless otherwise stated)*

### Executive Summary

We broadcast in the United States our music, sports, news, talk, entertainment, traffic and weather channels for a subscription fee through our proprietary satellite radio systems — the SIRIUS system and the XM system. On July 28, 2008, our wholly owned subsidiary, Vernon Merger Corporation, merged (the “Merger”) with and into XM Satellite Radio Holdings Inc. and, as a result, XM Satellite Radio Holdings Inc. is now our wholly owned subsidiary. The SIRIUS system consists of three in-orbit satellites, approximately 120 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. The XM system consists of four in-orbit satellites, over 700 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. Subscribers can also receive certain of our music and other channels over the Internet.

Our satellite radios are primarily distributed through automakers (“OEMs”); through more than 19,000 retail locations; and through our websites. We have agreements with every major automaker to offer SIRIUS or XM satellite radios as factory or dealer-installed equipment in their vehicles. SIRIUS and XM radios are also offered to customers of rental car companies, including Hertz and Avis.

As of December 31, 2008, we had 19,003,856 subscribers. Our subscriber totals include subscribers under our regular pricing plans; discounted pricing plans; subscribers that have prepaid, including payments either made or due from automakers for prepaid subscriptions included in the sale or lease price of a new vehicle; active SIRIUS radios under our agreement with Hertz; active XM radios under our agreement with Avis; subscribers to SIRIUS Internet Radio and XM Internet Radio, our Internet services; and certain subscribers to our weather, traffic, data and video services.

Our primary source of revenue is subscription fees, with most of our customers subscribing on an annual, semi-annual, quarterly or monthly basis. We offer discounts for pre-paid and long-term subscriptions as well as discounts for multiple subscriptions on each platform. In 2009, we increased the discounted price for additional subscriptions from \$6.99 per month to \$8.99 per month. We also derive revenue from activation fees, the sale of advertising on select non-music channels, the direct sale of satellite radios and accessories, and other ancillary services, such as our Backseat TV, data and weather services.

In certain cases, automakers include a subscription to our radio services in the sale or lease price of vehicles. The length of these prepaid subscriptions varies, but is typically three to twelve months. In many cases, we receive subscription payments from automakers in advance of the activation of our service. We also reimburse various automakers for certain costs associated with satellite radios installed in their vehicles.

We also have an interest in the satellite radio services offered in Canada. Subscribers to the SIRIUS Canada service and the XM Canada service are not included in our subscriber count.

On August 5, 2008, Sirius Satellite Radio Inc. changed its name to Sirius XM Radio Inc. XM Satellite Radio Holdings Inc., together with its subsidiaries, is operated as an unrestricted subsidiary under the agreements governing our existing indebtedness. As an unrestricted subsidiary, transactions between the companies are required to comply with various contractual provisions in our respective debt instruments.

### Unaudited Pro Forma Information

The following discussion of our pro forma information includes non-GAAP financial results and measures that assume the Merger occurred on January 1, 2006. These financial results exclude the impact of purchase price accounting adjustments and refinancing transactions. We believe this non-GAAP financial information provides meaningful supplemental information regarding our operating performance and is used for internal management purposes, when publicly providing the business outlook, and as a means to evaluate period-to-period comparisons. Please refer to the footnotes (pages 26 to 44) following our discussion of results of operations for the definitions and further discussion of usefulness of such non-GAAP financial measures.

*Subscriber and Key Operating Metrics.* The following tables contain our pro forma subscribers and key operating metrics for the years ended December 31, 2008, 2007 and 2006:

**Unaudited Pro Forma Annual Subscribers and Metrics:**

	Unaudited Pro Forma For the Years Ended December 31,		
	2008	2007	2006
Beginning subscribers . . . . .	17,348,622	13,653,107	9,249,517
Gross subscriber additions . . . . .	7,710,306	8,077,674	7,629,645
Deactivated subscribers . . . . .	(6,055,072)	(4,382,159)	(3,226,055)
Net additions . . . . .	1,655,234	3,695,515	4,403,590
Ending subscribers . . . . .	19,003,856	17,348,622	13,653,107
Retail . . . . .	8,905,087	9,238,715	8,454,581
OEM . . . . .	9,995,953	8,033,268	5,169,372
Rental . . . . .	102,816	76,639	29,154
Ending subscribers . . . . .	19,003,856	17,348,622	13,653,107
Retail . . . . .	(333,628)	784,135	2,388,124
OEM . . . . .	1,962,685	2,863,895	2,057,744
Rental . . . . .	26,177	47,485	(42,278)
Net additions . . . . .	1,655,234	3,695,515	4,403,590

	Unaudited Pro Forma For the Years Ended December 31,		
	2008	2007	2006
Average self-pay monthly churn(1)(7) . . . . .	1.8%	1.7%	1.7%
Conversion rate(2)(7) . . . . .	47.5%	50.9%	51.9%
ARPU(3)(7) . . . . .	\$ 10.51	\$ 10.61	\$ 10.82
SAC, as adjusted, per gross subscriber addition(4)(7) . . .	\$ 74	\$ 86	\$ 89
Customer service and billing expenses, as adjusted, per average subscriber(5)(7) . . . . .	\$ 1.11	\$ 1.18	\$ 1.31
Total revenue . . . . .	\$2,436,740	\$ 2,058,608	\$ 1,570,652
Free cash flow(6)(7) . . . . .	\$ (551,771)	\$ (504,869)	\$ (1,234,435)
Net cash used in operating activities . . . . .	\$ (403,883)	\$ (303,496)	\$ (883,793)
Adjusted income (loss) from operations(8) . . . . .	\$ (136,298)	\$ (565,452)	\$ (679,312)
Net loss . . . . .	\$ (902,335)	\$ (1,247,633)	\$ (1,823,739)

Note: For the footnotes, see pages 27 to 45

*Subscribers.* We ended 2008 with 19,003,856 subscribers, an increase of 10% from the 17,348,622 subscribers as of December 31, 2007. Gross subscriber additions decreased approximately 5% during 2008 from 2007. Domestic auto sales fell 18% to 13.2 million in 2008 from 16.1 million in 2007. The growth in OEM gross additions was offset by declines in retail gross additions. Deactivation rates for self-pay subscriptions were 1.8%; deactivations due to non-conversions of subscribers in paid promotional trial periods increased as production penetration rates increased.

*ARPU.* Total ARPU for the year ended December 31, 2008 was \$10.51 compared to \$10.61 for the year ended December 31, 2007. The decrease was driven by an increase in the mix of discounted OEM promotional subscriptions, subscriber winback programs, second subscribers and a decline in net advertising revenue per average subscriber.



*SAC, As Adjusted, Per Gross Subscriber Addition.* SAC, as adjusted, per gross subscriber addition improved by 14% to \$74 from \$86 for the years ended December 31, 2008 and 2007, respectively. The decrease was primarily driven by lower retail and OEM subsidies due to better product economics and improved equipment margin.

*Customer Service and Billing Expenses, As Adjusted, Per Average Subscriber.* Customer service and billing expenses, as adjusted, per average subscriber improved 6% to \$1.11 for the year ended December 31, 2008 compared with \$1.18 for the year ended December 31, 2007. The decline was primarily due to efficiencies across a larger subscriber base.

*Unaudited Pro Forma Results of Operations.* Set forth below are certain pro forma items that give effect to the Merger as if it had occurred on January 1, 2006. The pro forma information below does not give effect to any adjustments as a result of the purchase price accounting for the Merger, nor the goodwill impairment charge taken during 2008. See footnote 8 for a reconciliation of net loss to adjusted income (loss) from operations.

	Unaudited Pro Forma For the Years Ended December 31,		
	2008	2007	2006
Total revenue . . . . .	\$2,436,740	\$ 2,058,608	\$ 1,570,652
Operating expenses:			
Satellite and transmission . . . . .	99,185	101,721	105,768
Programming and content . . . . .	446,638	401,461	352,968
Revenue share and royalties . . . . .	477,962	403,059	218,928
Customer service and billing . . . . .	244,195	217,402	179,183
Cost of equipment . . . . .	66,104	97,820	84,182
Sales and marketing . . . . .	342,296	413,084	414,984
Subscriber acquisition costs . . . . .	577,126	654,775	644,578
General and administrative . . . . .	267,032	271,831	172,785
Engineering, design and development . . . . .	52,500	62,907	87,505
Depreciation and amortization . . . . .	245,571	293,976	274,629
Share-based payment expense . . . . .	124,619	165,099	505,964
Restructuring and related costs . . . . .	10,434	—	—
Total operating expenses . . . . .	<u>2,953,662</u>	<u>3,083,135</u>	<u>3,041,474</u>
Loss from operations . . . . .	(516,922)	(1,024,527)	(1,470,822)
Other expense . . . . .	<u>(381,425)</u>	<u>(221,610)</u>	<u>(350,866)</u>
Loss before income taxes . . . . .	(898,347)	(1,246,137)	(1,821,688)
Income tax expense . . . . .	<u>(3,988)</u>	<u>(1,496)</u>	<u>(2,051)</u>
Net loss . . . . .	<u>\$ (902,335)</u>	<u>\$ (1,247,633)</u>	<u>\$ (1,823,739)</u>

*Highlights for the Year Ended December 31, 2008.* Our revenue grew 18%, or by \$378,132, in the year ended December 31, 2008. This revenue growth was driven by our 17% growth in average subscribers. This increase, combined with lower fixed costs, particularly in the fourth quarter, resulted in improved adjusted loss from operations of (\$136,298) in 2008 versus (\$565,452) in 2007, as increases in our variable costs were more than offset by decreases in other operating expenses. Total operating expenses, excluding restructuring, depreciation and share-based payment expense and a \$27,500 one-time Merger related payment to a programming provider, decreased by 3%, or \$78,522, during 2008.

Programming and content costs for the year ended December 31, 2008 increased 11%, or \$45,177, including a one-time payment to a programming provider of \$27,500 due upon completion of the Merger. Excluding this one-time payment, programming costs increased by 4% or \$17,677.

Revenue share and royalties increased by 19%, or \$74,903, over the prior year, maintaining a flat percentage of revenue of approximately 20% in 2008 and 2007. Customer service and billing costs increased 12%, or \$26,793, from the prior year due to a larger subscriber base, mitigated by scale efficiencies. Cost of equipment declined by 32%, or



\$31,716, as compared to the prior year as a result of lower product costs. Sales and marketing costs declined 17%, or \$70,788, due to reduced advertising and cooperative marketing spend, offset in part by higher customer retention spending. As a percentage of revenue, sales and marketing costs improved from 20% in 2007 to 14% in 2008.

Subscriber acquisition costs declined nearly 12%, or \$77,649, and as a percentage of revenue improved from 32% to 24%. This improvement was primarily driven by a 14% improvement in SAC, as adjusted, per gross subscriber addition, due to improved product economics and lower retail and OEM subsidies. Subscriber acquisition costs also declined as a result of the 5% decline in gross additions during 2008.

General and administrative costs decreased 2%, or \$4,799, and declined as a percent of revenue, reflecting lower one time costs in connection with the Merger in the prior year and early integration savings in 2008. Engineering, design and development costs decreased 17%, or \$10,407, due to fewer OEM platform launches and lower product development costs.

Other expenses increased by \$159,815 or 72% as compared to 2007 as a result of higher interest expense and loss from redemption of debt during 2008.

***Unaudited Pro Forma Fourth Quarter Subscribers and Metrics:***

The following tables contain our pro forma subscribers and key operating metrics for the three months ended December 31, 2008, 2007 and 2006:

	<b>Unaudited Pro Forma For the Three Months Ended December 31,</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Beginning subscribers . . . . .	18,920,911	16,234,070	12,305,181
Gross subscriber additions . . . . .	1,713,210	2,336,640	2,292,172
Deactivated subscribers . . . . .	(1,630,265)	(1,222,088)	(944,246)
Net additions . . . . .	<u>82,945</u>	<u>1,114,552</u>	<u>1,347,926</u>
Ending subscribers . . . . .	<u>19,003,856</u>	<u>17,348,622</u>	<u>13,653,107</u>
Retail . . . . .	8,905,087	9,238,715	8,454,581
OEM . . . . .	9,995,953	8,033,268	5,169,372
Rental . . . . .	<u>102,816</u>	<u>76,639</u>	<u>29,154</u>
Ending subscribers . . . . .	<u>19,003,856</u>	<u>17,348,622</u>	<u>13,653,107</u>
Retail . . . . .	(131,333)	314,908	830,153
OEM . . . . .	218,249	791,356	535,854
Rental . . . . .	<u>(3,971)</u>	<u>8,288</u>	<u>(18,081)</u>
Net additions . . . . .	<u>82,945</u>	<u>1,114,552</u>	<u>1,347,926</u>

	<b>Unaudited Pro Forma For the Three Months Ended December 31,</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Average self-pay monthly churn(1)(7) . . . . .	1.8%	1.7%	1.7%
Conversion rate(2)(7) . . . . .	44.2%	51.4%	49.8%
ARPU(7)(10) . . . . .	\$ 10.60	\$ 10.42	\$ 10.82
SAC, as adjusted, per gross subscriber addition(7)(11) . . . . .	\$ 70	\$ 83	\$ 90
Customer service and billing expenses, as adjusted, per average subscriber(7)(12) . . . . .	\$ 1.18	\$ 1.30	\$ 1.42
Total revenue . . . . .	\$ 644,108	\$ 557,515	\$ 450,502
Free cash flow(7)(13) . . . . .	\$ 25,877	\$ 5,405	\$ (33,788)
Net cash provided by operating activities . . . . .	\$ 64,195	\$ 30,957	\$ 77,908
Adjusted income (loss) from operations(14) . . . . .	\$ 31,797	\$ (224,143)	\$ (236,628)
Net loss . . . . .	\$ (248,468)	\$ (405,041)	\$ (502,321)

Note: For the footnotes, see pages 27 to 45

*Subscribers.* We ended the fourth quarter 2008 with 19,003,856 subscribers, an increase of 10% from the 17,348,622 subscribers as of December 31, 2007. Gross subscriber additions decreased about 27% in the fourth quarter of 2008 from the fourth quarter of 2007. Gross additions in our OEM channel were approximately 13% lower in the fourth quarter versus the prior year period, with higher production penetration failing to offset declines in auto sales. Auto sales fell 35% in the fourth quarter of 2008 to 2.5 million from 3.8 million in the fourth quarter of 2007. The decline in OEM gross additions was also accompanied by declines in retail gross additions. Deactivations for self-pay subscriptions remained relatively consistent at 1.8% per month; deactivations due to non-conversions of subscribers in paid promotional trial periods increased as production penetration rates increased.

*ARPU.* Total ARPU for the three months ended December 31, 2008 was \$10.60, compared to \$10.42 for the three months ended December 31, 2007. The increase was driven by the start of our “Best of” package sales, most of which were at the \$16.99 price point, and by lower OEM inventories. These factors were partially offset by an increase in the mix of discounted OEM promotional trials, subscriber winback programs, second subscribers and a decline in net advertising revenue per average subscriber.

*SAC, As Adjusted, Per Gross Subscriber Addition.* SAC, as adjusted, per gross subscriber addition was \$70 and \$83 for the three months ended December 31, 2008 and 2007, respectively. The decrease was primarily driven by lower retail and OEM subsidies due to better product economics and improved equipment margin.

*Customer Service and Billing Expenses, As Adjusted, Per Average Subscriber.* Customer service and billing expenses, as adjusted, per average subscriber declined 9% to \$1.18 for the three months ended December 31, 2008 compared with \$1.30 for the three months ended December 31, 2007. The decline was primarily due to efficiencies across a larger subscriber base.

*Unaudited Pro Forma Results of Operations.* Set forth below are certain pro forma items that give effect to the Merger as if it had occurred on January 1, 2006. The pro forma information below does not give effect to any adjustments as a result the purchase price accounting for the Merger, nor the goodwill impairment charge taken during 2008. See footnote 14 for a reconciliation of net loss to adjusted income (loss) from operations.

	Unaudited Pro Forma For the Three Months Ended December 31,		
	2008	2007	2006
Total revenue . . . . .	\$ 644,108	\$ 557,515	\$ 450,502
Operating expenses:			
Satellite and transmission . . . . .	22,851	23,697	23,609
Programming and content . . . . .	105,215	109,076	97,990
Revenue share and royalties . . . . .	122,711	163,541	64,467
Customer service and billing . . . . .	67,036	65,006	53,980
Cost of equipment . . . . .	18,084	37,334	42,630
Sales and marketing . . . . .	81,712	123,711	146,650
Subscriber acquisition costs . . . . .	132,731	180,767	189,868
General and administrative . . . . .	51,591	64,223	49,326
Engineering, design and development . . . . .	10,380	14,303	18,610
Depreciation and amortization . . . . .	49,519	75,045	71,538
Share-based payment expense . . . . .	24,945	52,897	68,649
Restructuring and related costs . . . . .	2,977	—	—
Total operating expenses . . . . .	<u>689,752</u>	<u>909,600</u>	<u>827,317</u>
Loss from operations . . . . .	(45,644)	(352,085)	(376,815)
Other expense . . . . .	<u>(202,649)</u>	<u>(52,055)</u>	<u>(124,113)</u>
Loss before income taxes . . . . .	(248,293)	(404,140)	(500,928)
Income tax expense . . . . .	<u>(175)</u>	<u>(901)</u>	<u>(1,393)</u>
Net loss . . . . .	<u><u>\$(248,468)</u></u>	<u><u>\$(405,041)</u></u>	<u><u>\$(502,321)</u></u>

*Highlights for the Three Months Ended December 31, 2008.* Our revenue grew 16%, or by \$86,593, in the three months ended December 31, 2008 compared to the three months ended December 31, 2007. This revenue growth was driven primarily by our 13% growth in average subscribers. Advertising revenue in the fourth quarter fell by approximately 23% due to advertisers' reduced spending while other revenue decreased by 5%. This increased revenue was accompanied by lower operating costs, as described below, resulting in a significantly improved adjusted loss from operations of \$31,797 compared to (\$224,143) in the fourth quarter of 2007. Total operating expenses, excluding goodwill impairment, restructuring, depreciation and share-based payment expense, decreased by 22%, or \$169,347, in the quarter.

Programming and content costs decreased by 4%, or \$3,861, from the prior year's quarter as a result of Merger related savings.

Revenue share and royalties, respectively representing approximately 19% and 29% of revenue during 2008 and 2007, decreased by 25%, or \$40,830, over the prior year's quarter. The prior period included a charge of \$52,440 resulting from the decision in January 2008 of the Copyright Royalty Board to increase royalties to the music industry commencing January 1, 2007. Adjusting for the royalty accrual in the fourth quarter of 2007, Revenue share and royalties increased 10%, or \$11,610, from the fourth quarter of 2007. Customer service and billing costs increased 3%, or \$2,030, from the prior year's quarter, reflecting higher subscriber totals and improved scale efficiencies. Cost of equipment declined by 52% or \$19,250 as compared to the prior year's quarter as a result of lower product costs.

Sales and marketing cost declined 34%, or \$41,999, over the prior year's quarter due to reduced advertising and cooperative marketing spend and Merger related savings, offset in part by higher customer retention spending. Sales and marketing costs were 13% of revenue in the fourth quarter of 2008 compared to 22% of revenue in the fourth quarter 2007.

Subscriber acquisition costs declined 27%, or \$48,036, and as a percent of revenue improved from 32% to 21% over the prior year's quarter. This improvement was driven by 27% lower gross additions in the fourth quarter.

General and administrative costs decreased 20%, or \$12,632, and declined as a percent of revenue from 12% to 8% over the prior year's quarter, reflecting lower Merger costs and savings from the integration of administrative functions. Engineering, design and development costs decreased 27%, or \$3,923, due to lower product development costs and Merger savings.

Other expenses increased by \$150,594 or 289% as compared to prior year's quarter as a result of higher interest expense and loss from redemption of debt during 2008.

## **Actual Results of Operations**

Our discussion of our results of operations, along with the selected financial information in the tables that follow, includes the following non-GAAP financial measures: average monthly self-pay churn; conversion rate; average monthly revenue per subscriber, or ARPU; subscriber acquisition cost, or SAC, as adjusted, per gross subscriber addition; customer service and billing expenses, as adjusted, per average subscriber; free cash flow; and adjusted income (loss) from operations. We believe these non-GAAP financial measures provide meaningful supplemental information regarding our operating performance and are used for internal management purposes, when publicly providing the business outlook, and as a means to evaluate period-to-period comparisons. Please refer to the footnotes following our discussion of results of operations for the definitions and further discussion of usefulness of such non-GAAP financial measures.

The discussion of our results of operations for the years ended December 31, 2008, 2007 and 2006 includes the financial results of XM from the date of the Merger. The inclusion of these results may render direct comparisons

with results for prior periods less meaningful. Accordingly, the discussion below addresses trends we believe are significant.

	Unaudited Actual For the Years Ended December 31,		
	2008	2007	2006
Beginning subscribers . . . . .	8,321,785	6,024,555	3,316,560
Gross subscriber additions . . . . .	14,954,112	4,183,901	3,758,159
Deactivated subscribers . . . . .	(4,272,041)	(1,886,671)	(1,050,164)
Net additions . . . . .	10,682,071	2,297,230	2,707,995
Ending subscribers . . . . .	19,003,856	8,321,785	6,024,555
Retail . . . . .	8,905,087	4,640,710	4,041,826
OEM . . . . .	9,995,953	3,665,631	1,959,009
Rental . . . . .	102,816	15,444	23,720
Ending subscribers . . . . .	19,003,856	8,321,785	6,024,555
Retail . . . . .	4,264,378	598,884	1,576,463
OEM . . . . .	6,330,321	1,706,622	1,135,316
Rental . . . . .	87,372	(8,276)	(3,784)
Net additions . . . . .	10,682,071	2,297,230	2,707,995

	Unaudited Actual For the Years Ended December 31,		
	2008	2007	2006
Average self-pay monthly churn(1)(7) . . . . .	1.8%	1.6%	1.6%
Conversion rate(2)(7) . . . . .	47.5%	47.5%	44.1%
ARPU(7)(16) . . . . .	\$ 9.91	\$ 10.46	\$ 11.01
SAC, as adjusted, per gross subscriber addition(7)(17) . . .	\$ 69	\$ 98	\$ 114
Customer service and billing expenses, as adjusted, per average subscriber(7)(18) . . . . .	\$ 1.02	\$ 1.10	\$ 1.37
Total revenue . . . . .	\$ 1,663,992	\$ 922,066	\$ 637,235
Free cash flow(7)(19) . . . . .	\$ (244,467)	\$ (218,624)	\$ (500,715)
Net cash used in operating activities . . . . .	\$ (152,797)	\$ (148,766)	\$ (421,702)
Adjusted income (loss) from operations(20) . . . . .	\$ 31,032	\$ (327,410)	\$ (513,140)
Net loss . . . . .	\$ (5,313,288)	\$ (565,252)	\$ (1,104,867)

Note: For the footnotes, see pages 27 to 45.

**Subscribers.** We ended 2008 with 19,003,856 subscribers, an increase of 128% from the 8,321,785 subscribers as of December 31, 2007. The increase was a result of the 9,716,070 subscribers acquired in the Merger, and a 25% increase in gross subscriber additions due to the inclusion of XM in our operating results as a result of the Merger. Gross additions in our OEM channel continued to grow as automakers continued to increase the portion of their production which incorporates satellite radio. The growth in OEM gross additions was offset by declines in retail gross additions. Deactivations include the results of XM from the date of the Merger. The deactivation rate for self-pay subscriptions increased slightly while the conversion rate for subscribers in paid promotional trial periods stayed constant.

**ARPU.** Total ARPU for the year ended December 31, 2008 was \$9.91, compared to \$10.46 for the year ended December 31, 2007. The decrease was driven by an increase in the mix of discounted OEM promotional trials, subscriber winback programs, second subscribers, the effect of purchase price accounting adjustments and a decline in net advertising revenue per average subscriber as subscriber growth exceeded the growth in ad revenues.

We expect ARPU to fluctuate based on the growth of our subscriber base, promotions, rebates offered to subscribers and corresponding take-rates, plan mix, subscription prices, advertising sales and the identification of additional revenue from subscribers.

*SAC, As Adjusted, Per Gross Subscriber Addition.* SAC, as adjusted, per gross subscriber addition was \$69 and \$98 for the years ended December 31, 2008 and 2007, respectively. The decrease was primarily driven by lower retail and OEM subsidies due to better product economics, the effect of purchase price accounting adjustments and improved equipment margins.

We expect SAC, as adjusted, per gross subscriber addition to decline as the costs of subsidized components of SIRIUS and XM radios decrease in the future. Our SAC, as adjusted, per gross subscriber addition will continue to be impacted by our increasing mix of OEM additions.

*Customer Service and Billing Expenses, As Adjusted, Per Average Subscriber.* Customer service and billing expenses, as adjusted, per average subscriber declined 7% to \$1.02 for the year ended December 31, 2008 compared with \$1.10 for the year ended December 31, 2007. The decline was primarily due to efficiencies across a larger subscriber base.

We expect customer service and billing expenses, as adjusted, per average subscriber to decrease on an annual basis as our subscriber base grows due to scale efficiencies in our call centers and other customer care and billing operations.

*Adjusted Income (Loss) from Operations.* Our adjusted income (loss) from operations for the year ended December 31, 2008 was \$31,032 compared to (\$327,410) for the year ended December 31, 2007. Adjusted income (loss) from operations was favorably impacted by the \$741,926 increase in revenues, partially offset by the \$383,484 increase in expenses included in adjusted income (loss) from operations, both of which were favorably impacted by the inclusion of the operating results of XM in the amount of \$82,863.

*Subscriber and Key Operating Metrics.* The following tables contain our subscribers and key operating metrics for the three months ended December 31, 2008, 2007 and 2006:

***Fourth Quarter Subscribers and Metrics:***

	Unaudited Actual For the Three Months Ended December 31,		
	2008	2007	2006
Beginning subscribers . . . . .	18,920,911	7,667,476	5,119,308
Gross subscriber additions . . . . .	1,713,210	1,194,014	1,234,574
Deactivated subscribers . . . . .	(1,630,265)	(539,705)	(329,327)
Net additions . . . . .	82,945	654,309	905,247
Ending subscribers . . . . .	<u>19,003,856</u>	<u>8,321,785</u>	<u>6,024,555</u>
Retail . . . . .	8,905,087	4,640,710	4,041,826
OEM . . . . .	9,995,953	3,665,631	1,959,009
Rental . . . . .	102,816	15,444	23,720
Ending subscribers . . . . .	<u>19,003,856</u>	<u>8,321,785</u>	<u>6,024,555</u>
Retail . . . . .	(131,333)	211,962	559,312
OEM . . . . .	218,249	444,244	348,935
Rental . . . . .	(3,971)	(1,897)	(3,000)
Net additions . . . . .	<u>82,945</u>	<u>654,309</u>	<u>905,247</u>

	Unaudited Actual For the Three Months Ended December 31,		
	2008	2007	2006
Average self-pay monthly churn(1)(7) . . . . .	1.8%	1.7%	1.7%
Conversion rate(2)(7) . . . . .	44.2%	47.4%	42.6%
ARPU(7)(21) . . . . .	\$ 10.24	\$ 10.05	\$ 10.92
SAC, as adjusted, per gross subscriber addition(7)(22) . . . . .	\$ 59	\$ 87	\$ 103
Customer service and billing expenses, as adjusted, per average subscriber(7)(23) . . . . .	\$ 1.18	\$ 1.23	\$ 1.60
Total revenue . . . . .	\$ 622,183	\$ 249,816	\$ 193,380
Free cash flow(7)(24) . . . . .	\$ 25,877	\$ 75,921	\$ 30,409
Net cash provided by operating activities . . . . .	\$ 64,195	\$ 89,818	\$ 34,868
Adjusted income (loss) from operations(25) . . . . .	\$ 72,155	\$(107,220)	\$(166,809)
Net loss . . . . .	\$(245,844)	\$(166,223)	\$(245,597)

Note: For the footnotes, see pages 27 to 45.

**Subscribers.** We ended the fourth quarter 2008 with 19,003,856 subscribers, an increase of 128% from the 8,321,785 subscribers as of December 31, 2007. The increase was primarily a result of the additional subscribers acquired in the Merger. Gross subscriber additions increased approximately 43% in the fourth quarter of 2008 from the fourth quarter of 2007 due to the inclusion of the XM business in our operating results in the current period; offset by a decline in gross additions of SIRIUS subscriptions in the quarter versus the prior year. Deactivations include the results of the XM business in the current quarter. Deactivations for self-pay subscriptions remained relatively consistent at 1.8% per month; non-conversions of subscribers in paid promotional trial periods increased as production penetration rates increased.

**ARPU.** Total ARPU for the three months ended December 31, 2008 was \$10.24, compared to \$10.05 for the three months ended December 31, 2007. The increase was driven by the start of our “Best of” package sales, most of which were at the \$16.99 price point, and by a lower mix of prepaid subscriptions from automakers in vehicles which have not sold through to end customers. These factors were partially offset by an increase in the mix of discounted OEM promotional trials, subscriber winback programs, second subscribers, the effect of purchase price accounting adjustments and a decline in net advertising revenue per average subscriber as subscriber growth exceeded the growth in ad revenues.

We expect ARPU to fluctuate based on the growth of our subscriber base, promotions, rebates offered to subscribers and corresponding take-rates, plan mix, subscription prices, advertising sales and the identification of additional revenue from subscribers.

**SAC, As Adjusted, Per Gross Subscriber Addition.** SAC, as adjusted, per gross subscriber addition was \$59 and \$87 for the three months ended December 31, 2008 and 2007, respectively. The decrease was primarily driven by lower retail and OEM subsidies due to better product economics, the effect of purchase price accounting adjustments and improved equipment margins.

We expect SAC, as adjusted, per gross subscriber addition to decline as the costs of subsidized components of SIRIUS and XM radios decrease in the future. Our SAC, as adjusted, per gross subscriber addition will continue to be impacted by our increasing mix of OEM gross subscriber additions.

**Customer Service and Billing Expenses, As Adjusted, Per Average Subscriber.** Customer service and billing expenses, as adjusted, per average subscriber declined 4% to \$1.18 for the three months ended December 31, 2008 compared with \$1.23 for the three months ended December 31, 2007. The decline was primarily due to efficiencies across a larger subscriber base.

We expect customer service and billing expenses, as adjusted, per average subscriber to decrease on an annual basis as our subscriber base grows due to scale efficiencies in our call centers and other customer care and billing operations.

**Adjusted Income (Loss) from Operations.** Our adjusted income (loss) from operations for the three months ended December 31, 2008 was \$72,155 compared to \$(107,220) for the three months ended December 31, 2007. Adjusted income (loss) from operations was favorably impacted by the \$372,367 increase in revenues, partially



offset by the \$192,992 increase in expenses included in adjusted income (loss) from operations, both of which were favorably impacted by the inclusion of the operating results of XM in the amount of \$60,371.

	Unaudited Actual For the Three Months Ended December 31,		
	2008	2007	2006
Total revenue . . . . .	\$ 622,183	\$ 249,816	\$ 193,380
Operating expenses:			
Satellite and transmission . . . . .	24,481	5,175	7,518
Programming and content . . . . .	89,214	62,735	80,414
Revenue share and royalties . . . . .	103,217	56,762	21,062
Customer service and billing . . . . .	67,818	29,288	25,912
Cost of equipment . . . . .	18,084	15,886	22,105
Sales and marketing . . . . .	80,699	56,866	77,780
Subscriber acquisition costs . . . . .	113,512	100,062	122,196
General and administrative . . . . .	64,586	37,212	32,379
Engineering, design and development . . . . .	12,404	7,946	13,448
Impairment of goodwill . . . . .	15,331	—	—
Depreciation and amortization . . . . .	82,958	27,638	27,495
Restructuring and related costs . . . . .	2,977	—	—
Total operating expenses . . . . .	<u>675,281</u>	<u>399,570</u>	<u>430,309</u>
Loss from operations . . . . .	(53,098)	(149,754)	(236,929)
Other expense . . . . .	<u>(192,571)</u>	<u>(15,699)</u>	<u>(8,512)</u>
Loss before income taxes . . . . .	(245,669)	(165,453)	(245,441)
Income tax expense . . . . .	<u>(175)</u>	<u>(770)</u>	<u>(156)</u>
Net loss . . . . .	<u><u>\$(245,844)</u></u>	<u><u>\$(166,223)</u></u>	<u><u>\$(245,597)</u></u>

*Highlights for the Three Months Ended December 31, 2008.* Our revenue grew 149%, or by \$372,367, in the three months ended December 31, 2008 compared to the three months ended December 31, 2007. \$316,623 of the increase was attributable to the inclusion of XM's results for the fourth quarter of 2008. Adjusted income (loss) from operations was \$72,155 in the fourth quarter of 2008 quarter compared to (\$107,220) in the fourth quarter of 2007. Total operating expenses, excluding goodwill impairment, restructuring, depreciation and share-based payment expense, increased by 54%, or \$192,992, in the quarter. \$262,908 of the increase was attributable to the Merger.

Programming and content costs increased by 42%, or \$26,479, over the prior year's quarter, as a result of the inclusion of XM's programming costs for the fourth quarter of 2008.

Revenue share and royalties increased by 82%, or \$46,455, over the prior year's quarter. \$52,564 of the increase was attributable to the Merger. Customer service and billing costs increased 132%, or \$38,530, from the prior year's quarter. \$36,002 of the increase was attributable to the Merger.

Sales and marketing cost increased 42%, or \$23,833, over the prior year's quarter due to reduced advertising and cooperative marketing spend, offset in part by higher customer retention spending. \$32,012 of the increase was attributable to the Merger.

Subscriber acquisition costs increased 13%, or \$13,450, over the prior year's quarter. \$37,343 of the increase was attributable to the Merger. The offsetting decrease in subscriber acquisition costs of \$23,893 was driven by improved product economics and lower retail and OEM subsidies.

General and administrative costs increased 74%, or \$27,374, over the prior year's quarter. \$24,006 of the increase was attributable to the Merger. Engineering, design and development costs increased 56%, or \$4,458. \$6,467 of the increase was attributable to the Merger. The offsetting decrease was due lower product development costs and savings at SIRIUS as result of the Merger.



***Year Ended December 31, 2008 Compared with Year Ended December 31, 2007 and Year Ended December 31, 2007 Compared with Year Ended December 31, 2006 — Actual***

***Total Revenue***

***Subscriber Revenue.*** Subscriber revenue includes subscription fees, activation fees and the effects of rebates.

- ***2008 vs. 2007:*** For the years ended December 31, 2008 and 2007, subscriber revenue was \$1,543,951 and \$854,933, respectively, an increase of 81% or \$689,018. The Merger was responsible for approximately \$467,489 of the increase and the remaining increase was primarily attributable to the growth of subscribers to our services.
- ***2007 vs. 2006:*** For the years ended December 31, 2007 and 2006, subscriber revenue was \$854,933 and \$575,404, respectively, an increase of 49% or \$279,529. The increase was primarily attributable to the 38% growth of subscribers to our service.

The following table contains a breakdown of our subscriber revenue for the periods presented:

	<b>For the Years Ended December 31,</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Subscription fees . . . . .	\$1,524,758	\$853,832	\$572,386
Activation fees . . . . .	23,025	20,878	15,612
Effect of rebates . . . . .	<u>(3,832)</u>	<u>(19,777)</u>	<u>(12,594)</u>
Total subscriber revenue . . . . .	<u>\$1,543,951</u>	<u>\$854,933</u>	<u>\$575,404</u>

Future subscriber revenue will be dependent upon, among other things, the growth of our subscriber base, promotions, rebates offered to subscribers and corresponding take-rates, plan mix, subscription prices and the identification of additional revenue streams from subscribers. Overall, we expect subscription revenue to increase due to the inclusion of the full period results of XM.

***Advertising Revenue.*** Advertising revenue includes the sale of advertising on our non-music channels, net of agency fees. Agency fees are based on a stated percentage per the advertising agreements applied to gross billing revenue.

- ***2008 vs. 2007:*** For the years ended December 31, 2008 and 2007, net advertising revenue was \$47,190 and \$34,192, respectively, which represents an increase of \$12,998. The Merger was responsible for approximately \$9,745 of the increase and the remaining increase was primarily attributable to an increase in advertisers compared to the year ended December 31, 2007.
- ***2007 vs. 2006:*** For the years ended December 31, 2007 and 2006, net advertising revenue was \$34,192 and \$31,044, respectively, an increase of \$3,148.

We expect advertising revenue to grow as our subscribers increase, as we continue to improve brand awareness and content, and as we increase the size and effectiveness of our advertising sales force. Additionally, advertising revenue will increase as a result of the inclusion of the full period results of XM. Advertising revenue is subject to fluctuation based on the national advertising environment.

***Equipment Revenue.*** Equipment revenue includes revenue and royalties from the sale of SIRIUS and XM radios, components and accessories.

- ***2008 vs. 2007:*** For the years ended December 31, 2008 and 2007, equipment revenue was \$56,001 and \$29,281, respectively, which represents an increase of \$26,720. The Merger was responsible for approximately \$18,991 of the increase and the remaining increase was primarily attributable to higher unit sales at higher average prices.
- ***2007 vs. 2006:*** For the years ended December 31, 2007 and 2006, equipment revenue was \$29,281 and \$26,798, respectively, an increase of \$2,483. The increase was the result of higher sales through our direct to consumer distribution channel, offset by the effects of promotional discounts and rebates.

We expect equipment revenue to increase as we introduce new products, integrate XM products and as sales grow through our direct to consumer distribution channel as well as the inclusion of the full period results of XM.

### *Operating Expenses*

*Satellite and Transmission.* Satellite and transmission expenses consist of costs associated with the operation and maintenance of our satellites; satellite telemetry, tracking and control system; terrestrial repeater network; satellite uplink facility; and broadcast studios.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, satellite and transmission expenses were \$59,279 and \$27,907, respectively, which represents an increase of \$31,372 primarily due to the impact of the Merger. XM satellite and transmission expense accounted for \$29,852 during the year ended December 31, 2008.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, satellite and transmission expenses were \$27,907 and \$41,797, respectively, a decrease of \$13,890. This decrease was a result of sales of certain satellite parts and lower maintenance and utility expense in 2007; and 2006 included an impairment charge associated with certain satellite long-lead time parts we purchased in 1999 that we no longer need.

We expect satellite and transmission expenses to decrease as we consolidate terrestrial repeater sites and realize other cost savings as a result of the Merger, however such expenses are expected to increase in the aggregate due to the inclusion of the full period results of XM.

*Programming and Content.* Programming and content expenses include costs to acquire, create and produce content and on-air talent costs. We have entered into various agreements with third parties for music and non-music programming that require us to pay license fees, share advertising revenue, purchase advertising on media properties owned or controlled by the licensor and pay other guaranteed amounts. Purchased advertising is recorded as a sales and marketing expense and the cost of sharing advertising revenue is recorded as Revenue share and royalties in the period the advertising is broadcast.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, programming and content expenses were \$312,189 and \$236,059, respectively, which represents an increase of \$76,130 primarily due to the Merger.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, programming and content expenses were \$236,059 and \$520,424, respectively, a decrease of \$284,365. Excluding share-based payment expense of \$9,643 and \$321,774 for the years ended December 31, 2007 and 2006, respectively, programming and content expenses increased \$27,766 from \$198,650 to \$226,416, which was primarily attributable to talent and license fees associated with new programming agreements, including NASCAR, and compensation related costs for additions to headcount. Share-based payment expense decreased \$312,131 primarily due to expense associated with shares of our common stock delivered to Howard Stern and his agent in 2006 upon the satisfaction of certain performance targets.

Our programming and content expenses, excluding share-based payment expense, is expected to decrease as we reduce duplicate programming and content costs, however such expenses are expected to increase in the aggregate due to the inclusion of the full period results of XM.

*Revenue Share and Royalties.* Revenue share and royalties include distribution and content provider revenue share, residuals and broadcast and web streaming royalties. Residuals are monthly fees paid based upon the number of subscribers using SIRIUS and XM radios purchased from retailers. Advertising revenue share is recorded to revenue share and royalties in the period the advertising is broadcast.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, revenue share and royalties were \$280,852 and \$146,715, respectively, which represents an increase of \$134,137. The increase was primarily attributable to an increase in our revenues, the \$91,103 effect of including XM's revenue share and royalty expense as a result of the Merger and an increase in the statutory royalty rate due for the performance of sound recordings.

- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, revenue share and royalties were \$146,715 and \$69,918, respectively, an increase of \$76,797, or 110%. This increase was primarily attributable to the determination by the Copyright Royalty Board of the royalty rate under the statutory license covering the performance of sound recordings. The 2007 royalty rate of 6% of gross revenue resulted in royalty expense of approximately \$48,100, of which approximately \$25,900 was recorded in the fourth quarter of 2007. The growth in revenues and increase in our OEM subscriber base also contributed to the increase in revenue share and royalties.

We expect these costs to increase as we continue to experience revenue growth and expand our distribution of SIRIUS and XM radios through automakers, as a result of statutory increases in the royalty rate for sound recording performances and as a result of the inclusion of the full period results of XM.

*Customer Service and Billing.* Customer service and billing expenses include costs associated with the operation of our customer service centers and subscriber management systems as well as bad debt expense.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, customer service and billing expenses were \$165,036 and \$93,817, respectively, which represents an increase of \$71,219 primarily due to the Merger. XM's customer services and billing expense accounted for \$59,821 during the year ended December 31, 2008. The remaining increase was primarily attributed to higher call center operating costs necessary to accommodate the increase in our subscriber base and higher total transaction fees on the larger customer base.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, customer service and billing expenses were \$93,817 and \$76,462, respectively, an increase of \$17,355. This increase was primarily due to call center operating costs necessary to accommodate our subscriber base, transaction fees due to the addition of new subscribers, and an increase in bad debt expense. Customer service and billing expenses, increased 23% compared with an increase in our subscribers of 38% year over year.

We expect our customer care and billing expenses to decrease on a per subscriber basis, but increase overall as our subscriber base grows due to increased call center operating costs, transaction fees and bad debt expense associated with a larger subscriber base as well as the inclusion of the full period results of XM.

*Cost of Equipment.* Cost of equipment includes costs from the sale of SIRIUS and XM radios, components and accessories.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, cost of equipment was \$46,091 and \$35,817, respectively, which represents an increase of \$10,274. The Merger related increase of approximately \$12,299 was offset partially by lower costs.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, cost of equipment was \$35,817 and \$35,233, respectively, an increase of \$584.

We expect cost of equipment to vary in the future with changes in sales through our direct to consumer distribution channel; however, such expenses are expected to increase as a result of the inclusion of the full period results of XM.

*Sales and Marketing.* Sales and marketing expenses include costs for advertising, media and production, including promotional events and sponsorships; cooperative marketing; customer retention and compensation. Cooperative marketing costs include fixed and variable payments to reimburse retailers and automakers for the cost of advertising and other product awareness activities.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, sales and marketing expenses were \$231,937 and \$183,213, respectively, which represents an increase of \$48,724. The Merger increased sales and marketing expense by \$60,964 of the increase, which was offset partially by a reduction in consumer advertising.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, sales and marketing expenses were \$183,213 and \$203,682, respectively, a decrease of \$20,469. Excluding share-based payment expense of \$15,607 and \$19,543 for the years ended December 31, 2007 and 2006, respectively, sales and marketing

expense decreased \$16,533 from \$184,139 to \$167,606. This decrease of \$16,533 was primarily due to lower consumer marketing and advertising and reduced cooperative marketing spend with our distributors offset by higher compensation related costs. Sales and marketing expenses, excluding share-based payment expense, decreased 9% compared with a 45% increase in total revenue from \$637,235 for the year ended December 31, 2006 to \$922,066 for the year ended December 31, 2007.

We expect sales and marketing expenses, excluding share-based payment expense, to decrease as we consolidate our advertising and promotional activities, gain efficiencies in marketing management and eliminate overlapping distribution support costs, however such expenses are expected to increase in the aggregate due to the inclusion of the full period results of XM.

*Subscriber Acquisition Costs.* Subscriber acquisition costs include hardware subsidies paid to radio manufacturers, distributors and automakers, including subsidies paid to automakers who include a SIRIUS or XM radio and a prepaid subscription to our service in the sale or lease price of a new vehicle; subsidies paid for chip sets and certain other components used in manufacturing radios; commissions paid to retailers and automakers as incentives to purchase, install and activate SIRIUS and XM radios; product warranty obligations; provisions for inventory allowance; and compensation costs associated with stock-based awards granted in connection with certain distribution agreements. The majority of subscriber acquisition costs are incurred and expensed in advance or concurrent with acquiring a subscriber. Subscriber acquisition costs do not include advertising, loyalty payments to distributors and dealers of SIRIUS and XM radios and revenue share payments to automakers and retailers of SIRIUS and XM radios.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, subscriber acquisition costs were \$371,343 and \$407,642, respectively, which represents a decrease of \$36,299. This decrease was primarily due to lower retail and OEM subsidies due to better product economics, offset partially by the impact of the Merger. XM's subscriber acquisition costs accounted for \$64,825 during the year ended December 31, 2008.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, subscriber acquisition costs were \$407,642 and \$451,614, respectively, a decrease of 10% or \$43,972. Excluding share-based payment expense of \$2,843 and \$31,898 for the years ended December 31, 2007 and 2006, respectively, subscriber acquisition costs decreased \$14,917, from \$419,716 to \$404,799. This decrease was primarily attributable to lower chipset subsidies and commission costs offset by higher OEM hardware subsidies. Share-based payment expense decreased \$29,055 primarily due to the timing of third parties achieving milestones and changes in the fair market value of such awards.

We expect total subscriber acquisition costs to fluctuate as increases or decreases in our gross subscriber additions are accompanied by continuing declines in the costs of subsidized components of SIRIUS and XM radios, but increase overall as a result of the inclusion of the full period results of XM. We intend to continue to offer subsidies, commissions and other incentives to acquire subscribers.

*General and Administrative.* General and administrative expenses include rent and occupancy, finance, legal, human resources, information technology and investor relations costs.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, general and administrative expenses were \$213,142 and \$155,863, respectively, which represents an increase of \$57,279. Excluding share-based payment expense of \$49,354 and \$44,317 for the years ended December 31, 2008 and 2007, respectively, general and administrative expenses increased \$52,242 from \$111,546 to \$163,788, primarily due to the impact of the Merger. XM's general and administrative expense accounted for \$43,222 during the year ended December 31, 2008. The remaining increase was primarily attributable to higher compensation-related costs to support the growth of our business.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, general and administrative expenses were \$155,863 and \$129,953, respectively, an increase of \$25,910. Excluding share-based payment expense of \$44,317 and \$49,928 for the years ended December 31, 2007 and 2006, respectively, general and administrative expenses increased \$31,521 from \$80,025 to \$111,546. This increase of \$31,521 was primarily a result of legal fees associated with increased litigation, including the CRB proceeding, and employment-related costs to support the growth of our business.

We expect our general and administrative expenses, excluding share-based payment expense, to decrease in future periods as we integrate XM. General and administrative expenses may fluctuate in certain periods as a result of litigation costs, however such expenses are expected to increase in the aggregate due to inclusion of the full period results of XM.

*Engineering, Design and Development.* Engineering, design and development expenses include costs to develop our future generation of chip sets and new products, research and development for broadcast information, and costs associated with the incorporation of our radios into vehicles manufactured by automakers.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, engineering, design and development expenses were \$40,496 and \$41,343, respectively, which represents a decrease of \$847. Excluding share-based payment expense of \$6,192 and \$3,584 for the years ended December 31, 2008 and 2007, respectively, engineering, design and development expenses decreased \$3,455 from \$37,759 to \$34,304. This decrease was primarily due to reduced OEM and product development costs, offset partially by the impact of the Merger.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, engineering, design and development expenses were \$41,343 and \$70,127, respectively, a decrease of \$28,784. Excluding share-based payment expense of \$3,584 and \$11,395 for the years ended December 31, 2007 and 2006, respectively, engineering, design and development expenses decreased \$20,973 from \$58,732 to \$37,759. This decrease of \$20,973 was primarily attributable to reduced OEM tooling and manufacturing upgrades associated with the factory installation of SIRIUS radios in additional vehicle models offset by higher employment related costs. Share-based payment expense decreased \$7,811 primarily due to the timing of third parties achieving certain production milestones.

We expect engineering, design and development expenses, excluding share-based payment expense, to decrease in future periods as we complete the integration of SIRIUS and XM and gain efficiencies in engineering, design and development activities, however such expenses are expected to increase in the aggregate due to inclusion of the full period results of XM.

#### *Other Income (Expense)*

*Interest and Investment Income.* Interest and investment income includes realized gains and losses, dividends and interest income, including amortization of the premium and discount arising at purchase.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, interest and investment income was \$9,079 and \$20,570, respectively. The decrease of \$11,491 was primarily attributable to lower interest rates in 2008 and a lower cash balance.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, interest and investment income was \$20,570 and \$33,320, respectively. The decrease of \$12,750 was primarily attributable to a lower cash balance in 2007 than 2006 and higher interest rates in 2006.

*Interest Expense.* Interest expense includes interest on outstanding debt, reduced by interest capitalized in connection with the construction of our satellites and launch vehicles.

- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, interest expense was \$144,833 and \$70,328, respectively, which represents an increase of \$74,505. Interest expense increased significantly as a result of the Merger, due to \$2,576,512 of additional debt and higher interest rates. Increases in interest expense were partially offset by the capitalized interest associated with satellite construction and related launch vehicle.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, interest expense was \$70,328 and \$64,032, respectively, an increase of \$6,296. The increase was primarily the result of the interest expense associated with the SIRIUS term loan, offset by interest capitalized in 2007 associated with satellite construction and a related launch vehicle.



*Loss from redemption of debt.* Loss from redemption of debt includes losses incurred as a result of the conversion of our 2½% Convertible Notes due 2009.

- *2008 vs. 2007:* For the year ended December 31, 2008 and 2007, loss from redemption of debt was \$98,203 and \$0, respectively.
- *2007 vs. 2006:* For the years ended December 31, 2007 and 2006, we did not incur any losses from the redemption of our debt.

*Loss on investments.* Loss on investments includes our share of SIRIUS Canada's and XM Canada's net losses, and losses recorded from our investment in XM Canada when the fair value was determined to be other than temporary.

- *2008 vs. 2007:* For the year ended December 31, 2008, loss on investment was \$30,507 and \$0, respectively.
- *2007 vs. 2006:* For the years ended December 31, 2006, loss on investment was \$0 and \$4,445, respectively.

### *Income Taxes*

*Income Tax Expense.* Income tax expense represents the recognition of a deferred tax liability related to the difference in accounting for our FCC licenses, which is amortized over 15 years for tax purposes but not amortized for book purposes in accordance with U.S. generally accepted accounting principles.

- *2008 vs. 2007:* We recorded income tax expense of \$2,476 and \$2,435 for the years ended December 31, 2008 and 2007, respectively.
- *2007 vs. 2006:* We recorded income tax expense of \$2,435 and \$2,065 for the years ended December 31, 2007 and 2006, respectively.

## **Liquidity and Capital Resources**

### ***Cash Flows for the Year Ended December 31, 2008 Compared with Year Ended December 31, 2007 and for the Year Ended December 31, 2007 Compared with Year Ended December 31, 2006***

As of December 31, 2008 and 2007, we had \$380,446 and \$438,820, respectively, in cash and cash equivalents.

The following table presents a summary of our cash flow activity for the periods set forth below. All numbers in this subsection are stated in thousands:

	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2008 vs. 2007</u>	<u>2007 vs. 2006</u>
Cash flows used in operating activities . . . .	\$(152,797)	\$(148,766)	\$(421,702)	\$ (4,031)	\$ 272,936
Cash flows provided by (used in) investing activities . . . . .	728,425	(54,186)	27,329	782,611	(81,515)
Cash flows (used in) provided by financing activities . . . . .	<u>(634,002)</u>	<u>248,351</u>	<u>25,787</u>	<u>(882,353)</u>	<u>222,564</u>
Net (decrease) increase in cash and cash equivalents . . . . .	(58,374)	45,399	(368,586)	(103,773)	413,985
Cash and cash equivalents at beginning of period . . . . .	<u>438,820</u>	<u>393,421</u>	<u>762,007</u>	<u>45,399</u>	<u>(368,586)</u>
Cash and cash equivalents at end of period . . . . .	<u>\$ 380,446</u>	<u>\$ 438,820</u>	<u>\$ 393,421</u>	<u>\$ (58,374)</u>	<u>\$ 45,399</u>

### *Cash Flows Used in Operating Activities*

- **2008 vs. 2007:** Net cash used in operating activities increased \$4,031 to \$152,797 for the year ended December 31, 2008 from \$148,766 for the year ended December 31, 2007. The increase was primarily the result of a decreased net loss, net of non-cash operating activities of \$190,345, offset partially by a decrease in cash provided by working capital of \$194,376. The decrease in working capital was primarily due to decreases in cash provided by deferred revenue and accounts payable and accrued expenses.
- **2007 vs. 2006:** Net cash used in operating activities decreased \$272,936 to \$148,766 for the year ended December 31, 2007 from \$421,702 for the year ended December 31, 2006. Such decrease in the net outflows of cash was attributable to the improvement in adjusted income (loss) from operations of \$185,730; higher purchase of inventory in 2006 and timing of payments related to programming and distribution arrangements in 2006.

### *Cash Provided by (Used in) Investing Activities*

- **2008 vs. 2007:** Net cash provided by investing activities was \$728,425 for the year ended December 31, 2008 compared with net cash used in investing activities of \$54,186 for the year ended December 31, 2007. The \$782,611 increase was primarily due to the inclusion of \$819,521 in net cash acquired from XM in the Merger offset partially by increased capital expenditures of \$65,287 associated with our satellite construction and launch vehicle.
- **2007 vs. 2006:** Net cash used in investing activities was \$54,186 for the year ended December 31, 2007 compared with net cash provided by investing activities of \$27,329 for the year ended December 31, 2006. The \$81,515 decrease in cash provided was primarily a result of sales of auction rate securities in 2006; \$29,444 of Merger related costs incurred in 2007; offset by a decrease in capital expenditures in 2007 of \$27,410 associated with our satellite construction and launch vehicle.

We will incur significant capital expenditures to construct and launch our new satellites and to improve our terrestrial repeater network and broadcast and administrative infrastructure. These capital expenditures will support our growth and the resiliency of our operations, and will also support the delivery of future new revenue streams.

### *Cash (Used In) Provided by Financing Activities*

- **2008 vs. 2007:** Net cash used in financing activities increased \$882,353 to \$634,002 for the year ended December 31, 2008 from net cash provided by financing activities of \$248,351 for the year ended December 31, 2007. Significant financing activities for the year ended December 31, 2008 included \$550,000 in cash proceeds from the issuance of 7% exchangeable senior subordinated notes; \$613,400 in cash used to extinguish 99% of the principal and accrued interest on XM's 9.75% Notes; \$203,500 in cash used to extinguish 100% of the principal, accrued interest and prepayment premiums on XM's Floating Rate Notes; and \$309,400 for transponder repurchase obligation, from both debt and equity holders of a consolidated variable interest entity, including a prepayment premium and interest accrued through the date of extinguishment.
- **2007 vs. 2006:** Net cash provided by financing activities increased \$222,564 to \$248,351 for the year ended December 31, 2007 from \$25,787 for the year ended December 31, 2006. The increase was a result of additional proceeds, net of related costs and principal repayments, from the SIRIUS term loan entered into in June 2007.

### *Financings and Capital Requirements*

We have historically financed our operations through the sale of debt and equity securities. It will be more difficult to obtain additional financing if prevailing instability in the credit and financial markets continues.



### ***Future Liquidity and Capital Resource Requirements***

*Debt Maturing in 2009 and 2010.* We have approximately \$537,000 of debt maturing in 2009 and 2010, including:

- at SIRIUS, \$1,744 of 8¾% Convertible Subordinated Notes that mature on September 29, 2009;
- at XM Holdings, approximately \$227,500 of 10% Convertible Senior Notes that mature on December 1, 2009;
- at XM Holdings and XM (as co-obligors), \$33,200 of 10% Senior Secured Discount Convertible Notes that mature on December 31, 2009; and
- at XM, a \$350,000 credit facility, which is fully drawn and \$100,000 of which is due in 2009, \$175,000 is due by May 5, 2010 and \$75,000 is due in May 2011.

As a result of the May 2010 maturities, our existing cash balances and our cash flows from operating activities may not be sufficient to fund our projected cash needs at that time. We may not be able to access additional sources of refinancing on similar terms or pricing as those that are currently in place, or at all, or otherwise obtain other sources of funding. An inability to access replacement or additional sources of liquidity to fund our cash needs or to refinance or otherwise fund the repayment of our maturing debt could adversely affect our growth, our financial condition, or results of operations, and our ability to make payments on our debt, and could force use to seek the protection of the bankruptcy laws. It will be more difficult to obtain additional financing if prevailing instability in credit and financial markets continues.

Since October 1, 2008, we have entered into a series of transactions to improve our liquidity and strengthen our balance sheet, including:

- the issuance of an aggregate of 539,611,513 shares of our common stock for \$128,412 aggregate principal amount of our 2½% Convertible Notes due 2009;
- the exchange of \$172,485 aggregate principal amount of outstanding 10% Convertible Senior Notes due 2009 of XM Holdings for a like principal amount of XM Holdings' Senior PIK Secured Notes due June 2011; and
- the execution of agreements with Liberty Media Corporation and its affiliate, Liberty Radio LLC, pursuant to which they have invested an aggregate of \$350,000 in the form of loans to us, are committed to invest an additional \$180,000 in loans to us, and have received a significant equity interest in us.

See Note 19 to the consolidated financial statements included elsewhere in this Annual Report and Proxy Statement for additional information on certain of these transactions.

*Credit Agreement with Space Systems/Loral.* In July 2007, SIRIUS amended and restated its Credit Agreement with Space Systems/Loral (the "Loral Credit Agreement"). Under the Loral Credit Agreement, Space Systems/Loral agreed to make loans to SIRIUS in an aggregate principal amount of up to \$100,000 to finance the purchase of SIRIUS' fifth and sixth satellites. After April 6, 2009, Loral's commitment will be limited to 80% of amounts due with respect to the construction of our sixth satellite. Loans made under the Loral Credit Agreement will be secured by SIRIUS' rights under the Satellite Purchase Agreement with Space Systems/Loral, including SIRIUS' rights to the new satellites. The loans are also entitled to the benefits of a subsidiary guarantee from Satellite CD Radio, Inc., the subsidiary that holds SIRIUS' FCC license, and any future material subsidiary that may be formed by SIRIUS. The maturity date of the loans is the earliest to occur of (i) June 10, 2010, (ii) 90 days after our sixth satellite becomes available for shipment, and (iii) 30 days prior to the scheduled launch of the sixth satellite. Any loans made under the Loral Credit Agreement generally will bear interest at a variable rate equal to three-month LIBOR plus 4.75%. The Loral Credit Agreement permits SIRIUS to prepay all or a portion of the loans outstanding without penalty.

SIRIUS has not requested any loans under the Loral Credit Agreement with Space Systems/Loral. The Loral Credit Agreement contains certain drawing conditions, including the requirement that SIRIUS have a market capitalization of at least \$1 billion. As a result of these borrowing conditions, we currently cannot borrow under this

facility and in the future we may be limited in our ability to borrow under this facility. We are in discussions with Space Systems/Loral regarding ways in which SIRIUS can realize the financial benefits it expected to receive under the Loral Credit Agreement, including through deferred payments on SIRIUS' satellite purchase agreements and other concessions, perhaps without drawing under the Loral Credit Agreement.

*Operating Liquidity.* Based upon our current plans, and other than our need to refinance our debt maturing in 2010, we believe that both SIRIUS and XM have sufficient cash, cash equivalents and marketable securities to cover the estimated funding needs through cash flow breakeven, the point at which revenues are sufficient to fund expected operating expenses, capital expenditures, working capital requirements, interest payments and taxes. The ability to meet our debt and other obligations depends on our future operating performance and on economic, financial, competitive and other factors. We continually review our operations for opportunities to adjust the timing of expenditures to ensure that sufficient resources are maintained. We have the ability and intend to manage the timing and related expenditures of certain of activities, including the launch of satellites, the deferral or payment of bonuses with equity, the deferral of capital projects, as well as the deferral of other discretionary expenses. Our financial projections are based on assumptions, which we believe are reasonable but contain significant uncertainties. There can be no assurance that our plan will be successful.

We are the sole stockholder of XM Holdings and its subsidiaries and its business is operated as an unrestricted subsidiary under the agreements governing our existing indebtedness. Under certain circumstances, SIRIUS may be unwilling or unable to contribute or loan XM capital to support its operations. Similarly, under certain circumstances, XM may be unwilling or unable to contribute or loan SIRIUS capital to support its operations. To the extent XM's funds are insufficient to support its business, XM may be required to seek additional financing, which may not be available on favorable terms, or at all. If XM is unable to secure additional financing, its business and results of operations may be adversely affected.

Tightening credit policies could also adversely impact our operational liquidity by making it more difficult or costly for our subscribers to access credit, and could have an adverse impact on our operational liquidity as a result of possible changes to our payment arrangements that credit card companies and other credit providers could unilaterally make.

We regularly evaluate our plans and strategy. These evaluations often result in changes to our plans and strategy, some of which may be material and significantly change our cash requirements or cause us to achieve cash flow breakeven at a later date. These changes in our plans or strategy may include: the acquisition of unique or compelling programming; the introduction of new features or services; significant new or enhanced distribution arrangements; investments in infrastructure, such as satellites, equipment or radio spectrum; and acquisitions of third parties that own programming, distribution, infrastructure, assets, or any combination of the foregoing. In addition, our operations will also be affected by the FCC order approving the Merger which imposed certain conditions upon, among other things, our program offerings and our ability to increase prices. Our future liquidity also may be adversely affected by, among other things, the nature and extent of the benefits achieved by operating XM as a wholly-owned unrestricted subsidiary under our existing indebtedness.

### ***Off-Balance Sheet Arrangements***

We are required under the terms of certain agreements to provide letters of credit and deposit monies in escrow, which place restrictions on cash and cash equivalents. As of December 31, 2008 and 2007, \$141,250 and \$53,000, respectively, was classified as restricted investments as a result of obligations under these letters of credit and escrow deposits. In 2009, we released to Major League Baseball and NASCAR an aggregate of \$140,000 held in escrow in satisfaction of future obligations under our agreements with them.

We have not entered into any other material off-balance sheet arrangements or transactions.

### ***2003 Long-Term Stock Incentive Plan***

SIRIUS maintains the Sirius Satellite Radio 2003 Long-Term Stock Incentive Plan (the "2003 Plan"). Employees, consultants and members of our board of directors are eligible to receive awards under the 2003 Plan. The 2003 Plan provides for the grant of stock options, restricted stock, restricted stock units and other stock-

based awards that the compensation committee of our board of directors may deem appropriate. Vesting and other terms of stock-based awards are set forth in the agreements with the individuals receiving the awards. Stock-based awards granted under the 2003 Plan are generally subject to a vesting requirement. Stock option awards are granted with an exercise price equal to the market price of our common stock at the date of grant and expire no later than ten years from the date of grant. Each restricted stock unit entitles the holder to receive one share of our common stock upon vesting.

As of December 31, 2008, approximately 96,557,000 shares of our common stock were available for grant under the 2003 Plan. During the year ended December 31, 2008, employees exercised 117,442 stock options at exercise prices ranging from \$1.45 to \$3.36 per share, resulting in proceeds to us of \$208.

### ***2007 Stock Incentive Plan***

XM Holdings maintains a 2007 Stock Incentive Plan (the “2007 Plan”) under which officers, other employees and other key individuals of XM may be granted various types of equity awards, including restricted stock, stock units, stock options, stock appreciation rights, dividend equivalent rights and other stock awards. Stock option awards under the 2007 Plan generally vest ratably over three years based on continuous service; while restricted stock generally vests ratably over one or three years based on continuous service. Stock option awards are granted with an exercise price equal to the market price of our common stock at the date of grant and expire no later than ten years from the date of grant. Grants of equity awards other than stock options or stock appreciation rights reduce the number of shares available for future grant by 1.5 times the number of shares granted under such equity awards. In connection with the Merger, the shares available for future grant under the 2007 Plan were adjusted using a conversion factor of 4.6 SIRIUS shares for 1 XM Holdings share. Since the Merger, there have been no grants of awards from the 2007 Plan. As of December 31, 2008, there were 62,102,063 shares available for future grant under the 2007 Plan.

### ***1998 Shares Award Plan***

XM Holdings maintains a 1998 Shares Award Plan (the “1998 Plan”) under which employees, consultants and non-employee directors of XM were granted stock options and restricted stock awards. Stock option awards and restricted stock awards under the 1998 Plan generally vest ratably over three years based on continuous service. Stock option awards are generally granted with an exercise price equal to the market price of our common stock at the date of grant and expire no later than ten years from the date of grant. The 1998 Plan terminated in June 2008 and shares are no longer available for future grant.

### ***XM Talent Option Plan***

XM Holdings maintains a Talent Option Plan (the “Talent Plan”) under which non-employee programming consultants to XM may be granted stock options awards. Stock option awards under the Talent Plan generally vest ratably over three years based on continuous service. Stock option awards are generally granted with an exercise price equal to the market price of our common stock at the date of grant and expire no later than ten years from the date of grant. In connection with the Merger, the shares available for future grant under the Talent Plan were adjusted using a conversion factor of 4.6 SIRIUS shares for 1 XM share. Since the Merger, there have been no grants of awards from the Talent Plan. As of December 31, 2008, there were 1,564,000 options available under the Talent Plan for future grant.

As of December 31, 2008, approximately 185,368,000 stock options, shares of restricted stock and restricted stock units were outstanding under all of our plans.

### ***Contractual Cash Commitments***

For a discussion of our “Contractual Cash Commitments” refer to Note 16 of to the consolidated financial statements included elsewhere in this Annual Report and Proxy Statement.

### ***Related Party Transactions***

For a discussion of related party transactions, see Note 10 to the consolidated financial statements included elsewhere in this Annual Report and Proxy Statement.

### ***Critical Accounting Policies and Estimates***

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles, which require management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the periods. We have disclosed all significant accounting policies in Note 2 to our consolidated financial statements included elsewhere in this Annual Report and Proxy Statement. We have identified the following policies, which were discussed with the audit committee of our board of directors, as critical to our business and understanding our results of operations.

***Fair Value of XM Assets Acquired and Liabilities Assumed.*** On July 28, 2008, our wholly owned subsidiary Vernon Merger Corporation merged (the “Merger”) with and into XM Satellite Radio Holdings Inc., with XM Holdings becoming our wholly-owned subsidiary. The application of purchase accounting under SFAS No. 141, *Business Combinations*, resulted in the transaction being valued at \$5,836,363 and our recording of goodwill acquired totaling \$6,601,046.

***Long-Lived Assets.*** We carry our long-lived assets at cost less accumulated depreciation. In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, we review our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset is not recoverable. At the time an impairment in value of a long-lived asset is identified, the impairment is measured as the amount by which the carrying amount of a long-lived asset exceeds its fair value. To determine fair value, we employ an expected present value technique, which utilizes multiple cash flow scenarios that reflect the range of possible outcomes and an appropriate discount rate.

In June 2006 we wrote-off \$10,917 for the net book value of certain satellite long-lead time parts purchased in 1999 that we will no longer need.

We evaluate our indefinite life intangible assets for impairment on an annual basis in accordance with FASB Statement No. 142, *Goodwill and Other Intangible Assets*. During the year ended December 31, 2008, we recorded \$4,766,190 of goodwill impairment. At December 31, 2008, our intangible assets with indefinite lives total \$2,333,654, and remaining unamortized total basis of our intangible assets with definite lives was \$438,671.

***Useful Life of Broadcast/Transmission System.*** Our satellite system includes the costs of our satellite construction, launch vehicles, launch insurance, capitalized interest, spare satellite, terrestrial repeater network and satellite uplink facility. In accordance with SFAS No. 144, we monitor our satellites for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset is not recoverable. The expected useful lives of our three in-orbit SIRIUS satellites were originally 15 years from the date they were placed into orbit. In June 2006, we adjusted the useful lives of two of our in-orbit SIRIUS satellites to 13 years to reflect the unanticipated loss of power from the solar array and the way we intend to operate the constellation. We continue to expect our spare SIRIUS satellite to operate effectively for 15 years from the date of launch. XM Holdings operates four in-orbit satellites, two of which function as in-orbit spares. The two in-orbit spare satellites were launched in 2001 while the other two satellites were launched one in each of 2005 and 2006. We estimate that the XM-3 and XM-4 satellites will meet their fifteen year predicted useful lives, and that XM-1 and XM-2 satellite’s useful lives will end in 2010. XM Holdings is constructing an additional XM satellite which is in storage awaiting its launch.

Our in-orbit satellites have experienced circuit failures on their solar arrays. We continue to monitor the operating condition of our in-orbit satellites. If events or circumstances indicate that the useful lives of our in-orbit satellites have changed, we will modify the depreciable life accordingly. If we were to revise our estimates, our depreciation expense would change, for example, a 10% decrease in the expected useful lives of satellites and spacecraft control facilities during 2008 would result in approximately \$12,662 of additional depreciation expense.

***Revenue Recognition.*** Revenue from subscribers consists of subscription fees; revenue derived from our agreement with Hertz and Avis; non-refundable activation fees; and the effects of rebates.

We recognize subscription fees as our service is provided to a subscriber. We record deferred revenue for prepaid subscription fees and amortize these prepayments to revenue ratably over the term of the respective subscription plan.

At the time of sale, vehicle owners purchasing or leasing a vehicle typically receive a three to twelve month prepaid subscription. We receive payment from certain automakers for these subscriptions in advance of our service being activated. Such prepayments are recorded to deferred revenue and amortized ratably over the service period upon activation and sale to a customer. We also reimburse certain automakers for certain costs associated with the installation of certain satellite radios at the time the vehicle is manufactured. The associated payments to the automakers are included in subscriber acquisition costs. We believe this is the appropriate characterization of our relationship since we are responsible for providing service to our customers including being obligated to the customer if there was interruption of service.

Activation fees are recognized ratably over the estimated term of a subscriber relationship, currently estimated to be 3.5 years. The estimated term of a subscriber relationship is based on market research and management's judgment and, if necessary, will be refined in the future. If we were to revise our estimate our recognition of activation fees would change, for example, a 10% decrease to the estimated term of a subscriber relationship during 2008 would result in approximately \$7,675 of additional activation fees.

As required by Emerging Issues Task Force ("EITF") No. 01-09, *Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)*, an estimate of rebates that are paid to subscribers is recorded as a reduction to revenue in the period the subscriber activates our service. For certain rebate promotions, a subscriber must remain active for a specified period of time to be considered eligible. In those instances, such estimate is recorded as a reduction to revenue over the required activation period. We estimate the effects of rebates based on actual take-rates for rebate incentives offered in prior periods, adjusted as deemed necessary based on currently available take-rate data. In subsequent periods, estimates are adjusted when necessary. For certain instant rebate promotions, we have recorded the consideration paid by us to the consumer as a reduction to revenue in the period the customer participated in the promotion.

In September 2006, the FASB issued EITF No. 06-01, *Accounting for Consideration Given by a Service Provider to Manufacturers or Resellers of Equipment Necessary for an End-Customer to Receive Service from the Service Provider*. The Task Force concluded that if consideration given by a service provider to a third-party manufacturer or reseller that is not the service provider's customer can be linked contractually to the benefit received by the service provider's customer, a service provider should account for the consideration in accordance with EITF No. 01-09, *Accounting for Consideration Given by a Vendor to a Customer*. EITF No. 06-01 is effective for annual reporting periods beginning after June 15, 2007. We adopted EITF No. 06-01 for the year ended December 31, 2007, which did not have a material impact on our consolidated results of operations or financial position.

We recognize revenues from the sale of advertising on some of our non-music channels as the advertising is broadcast. Agency fees are calculated based on a stated percentage applied to gross billing revenue for our advertising inventory and are reported as a reduction of advertising revenue. We pay certain third parties a percentage of advertising revenue. Advertising revenue is recorded gross of such revenue share payments in accordance with EITF No. 99-19, *Reporting Revenue Gross as a Principal versus Net as an Agent*, as we are the primary obligor in the transaction. Advertising revenue share payments are recorded to programming and content expense during the period in which the advertising is broadcast.

Equipment revenue from the direct sale of SIRIUS and XM radios and accessories is recognized upon shipment, net of discounts and rebates. Shipping and handling costs billed to customers are recorded as revenue. Shipping and handling costs associated with shipping goods to customers are recorded to cost of equipment.

EITF No. 00-21, *Accounting for Revenue Arrangements with Multiple Deliverables*, provides guidance on how and when to recognize revenues for arrangements that may involve the delivery or performance of multiple products, services and/or rights to use assets. Revenue arrangements with multiple deliverables are required to be divided into separate units of accounting if the deliverables in the arrangement meet certain criteria. Arrangement consideration must be allocated among the separate units of accounting based on their relative fair values.



We determined that the sale of our service through our direct to consumer channel with accompanying equipment constitutes a revenue arrangement with multiple deliverables. In these types of arrangements, amounts received for equipment are recognized as equipment revenue; amounts received for service are recognized as subscription revenue; and amounts received for the non-refundable, up-front activation fee that are not contingent on the delivery of the service are allocated to equipment revenue. Activation fees are recorded to equipment revenue only to the extent that the aggregate equipment and activation fee proceeds do not exceed the fair value of the equipment. Any activation fees not allocated to the equipment are deferred upon activation and recognized as subscriber revenue on a straight-line basis over the estimated term of a subscriber relationship.

*Share-based Payment.* Effective January 1, 2006, we adopted the provisions of Statement of Financial Accounting Standard (“SFAS”) No. 123 (revised 2004), *Share-Based Payment*, using the modified prospective transition method. Our 2005 consolidated results of operations and financial position were not restated under this transition method. The share-based payment expense recognized beginning January 1, 2006 includes compensation cost for all stock-based awards granted to employees and members of our board of directors (i) prior to, but not vested as of, January 1, 2006 based on the grant date fair value originally estimated in accordance with the provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, and (ii) subsequent to December 31, 2005 based on the grant date fair value estimated in accordance with the provisions of SFAS No. 123R. Compensation cost under SFAS No. 123R is recognized ratably using the straight-line attribution method over the expected vesting period. SFAS No. 123R requires forfeitures to be estimated on the grant date and revised in subsequent periods if actual forfeitures differ from those estimates.

Effective January 1, 2006, we account for such awards at fair value in accordance with SFAS No. 123R and SEC guidance contained in Staff Accounting Bulletin (“SAB”) No. 107. The fair value of equity instruments granted to non-employees is measured in accordance with EITF No. 96-18, *Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. The final measurement date of equity instruments with performance criteria is the date that each performance commitment for such equity instrument is satisfied or there is a significant disincentive for non-performance.

Upon adoption of SFAS No. 123R, we continued to estimate the fair value of stock-based awards using the Black-Scholes-Merton option valuation model (“Black-Scholes-Merton”). Black-Scholes-Merton was developed to estimate the fair market value of traded options, which have no vesting restrictions and are fully transferable. Option valuation models require the input of highly subjective assumptions. Because our stock-based awards have characteristics significantly different from those of traded options and because changes in the subjective assumptions can materially affect the fair market value estimate, the existing option valuation models do not necessarily provide a reliable single measure of the fair value of our stock-based awards.

Fair value determined using Black-Scholes-Merton varies based on assumptions used for the expected life, expected stock price volatility and risk-free interest rates. We estimated the fair value of awards granted during the years ended December 31, 2008, 2007 and 2006 using the implied volatility of actively traded options on our stock. We believe that implied volatility is more representative of future stock price trends than historical volatility. The expected life assumption represents the weighted-average period stock-based awards are expected to remain outstanding. These expected life assumptions are established through a review of historical exercise behavior of stock-based award grants with similar vesting periods. Where historical patterns do not exist, contractual terms are used. The risk-free interest rate represents the daily treasury yield curve rate at the reporting date based on the closing market bid yields on actively traded U.S. treasury securities in the over-the-counter market for the expected term. Our assumptions may change in future periods.

*Income Taxes.* We account for income taxes in accordance with SFAS No. 109, *Accounting for Income Taxes*, and FIN No. 48, *Accounting for Uncertainty in Income Taxes*. Deferred income taxes are recognized for the tax consequences related to temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the amounts used for tax purposes at each year-end, based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. A valuation allowance is established when necessary based on the weight of available evidence, if it is considered more likely than not that all or some portion of the deferred tax assets will not be realized. Income tax expense is the sum of current income tax plus the change in deferred tax assets and liabilities.

FIN No. 48 requires a company to first determine whether it is more-likely-than-not (defined as a likelihood of more than fifty percent) that a tax position will be sustained based on its technical merits as of the reporting date, assuming that taxing authorities will examine the position and have full knowledge of all relevant information. A tax position that meets this more-likely-than-not threshold is then measured and recognized at the largest amount of benefit that is greater than fifty percent likely to be realized upon effective settlement with a taxing authority.

### Footnotes

- (1) Average self-pay monthly churn represents the monthly average of self-pay deactivations by the quarter divided by the average self-pay subscriber balance for the quarter.
- (2) We measure the percentage of subscribers that receive our service and convert to self-paying after the initial promotion period. We refer to this as the “conversion rate.” At the time of sale, vehicle owners generally receive between three and twelve month prepaid trial subscriptions and we receive a subscription fee from the OEM. Promotional periods generally include the period of trial service plus 30 days to handle the receipt and processing of payments. We measure conversion rate three months after the period in which the trial service ends. Based on our experience it may take up to 90 days after the trial service ends for subscribers to respond to our marketing communications and become self-paying subscribers.
- (3) ARPU is derived from total earned subscriber revenue and net advertising revenue, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. ARPU is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Pro Forma For the Years Ended December 31,		
	2008	2007	2006
Subscriber revenue . . . . .	\$ 2,247,334	\$ 1,879,766	\$ 1,417,222
Net advertising revenue . . . . .	69,933	73,340	66,374
Total subscriber and net advertising revenue . . . . .	<u>\$ 2,317,267</u>	<u>\$ 1,953,106</u>	<u>\$ 1,483,596</u>
Daily weighted average number of subscribers . . . . .	18,373,274	15,342,041	11,428,642
ARPU . . . . .	\$ 10.51	\$ 10.61	\$ 10.82

- (4) SAC, as adjusted, per gross subscriber addition is derived from subscriber acquisition costs and margins from the direct sale of radios and accessories, excluding share-based payment expense divided by the number of gross subscriber additions for the period. SAC, as adjusted, per gross subscriber addition is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Pro Forma For the Years Ended December 31,		
	2008	2007	2006
Subscriber acquisition cost . . . . .	\$ 577,140	\$ 666,785	\$ 676,476
Less: share-based payment expense granted to third parties and employees . . . . .	(14)	(12,010)	(31,898)
Less/Add: margin from direct sales of radios and accessories . . . . .	<u>(3,294)</u>	<u>40,206</u>	<u>35,664</u>
SAC, as adjusted . . . . .	<u>\$ 573,832</u>	<u>\$ 694,981</u>	<u>\$ 680,242</u>
Gross subscriber additions . . . . .	7,710,306	8,077,674	7,629,645
SAC, as adjusted, per gross subscriber addition . . . . .	\$ 74	\$ 86	\$ 89



- (5) Customer service and billing expenses, as adjusted, per average subscriber is derived from total customer service and billing expenses, excluding share-based payment expense, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. Customer service and billing expenses, as adjusted, per average subscriber is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Pro Forma For the Years Ended December 31,		
	2008	2007	2006
Customer service and billing expenses . . . . .	\$ 248,176	\$ 220,593	\$ 181,333
Less: share-based payment expense . . . . .	(3,981)	(3,191)	(2,150)
Customer service and billing expenses, as adjusted . . .	<u>\$ 244,195</u>	<u>\$ 217,402</u>	<u>\$ 179,183</u>
Daily weighted average number of subscribers . . . . .	18,373,274	15,342,041	11,428,642
Customer service and billing expenses, as adjusted, per average subscriber . . . . .	\$ 1.11	\$ 1.18	\$ 1.31

- (6) Free cash flow is calculated as follows:

	Unaudited Pro Forma For the Years Ended December 31,		
	2008	2007	2006
Net cash used in operating activities . . . . .	\$(403,883)	\$(303,496)	\$ (883,793)
Additions to property and equipment . . . . .	(161,394)	(198,602)	(367,693)
Merger related costs . . . . .	(23,519)	(29,444)	—
Restricted and other investment activity . . . . .	<u>37,025</u>	<u>26,673</u>	<u>17,051</u>
Free cash flow . . . . .	<u>\$(551,771)</u>	<u>\$(504,869)</u>	<u>\$(1,234,435)</u>

- (7) Average self-pay monthly churn; conversion rate; ARPU; SAC, as adjusted, per gross subscriber addition; customer service and billing expenses, as adjusted, per average subscriber; and free cash flow are not measures of financial performance under U.S. generally accepted accounting principles (“GAAP”). We believe these non-GAAP financial measures provide meaningful supplemental information regarding our operating performance and are used by us for budgetary and planning purposes; when publicly providing our business outlook; as a means to evaluate period-to-period comparisons; and to compare our performance to that of our competitors. We also believe that investors also use our current and projected metrics to monitor the performance of our business and to make investment decisions.

We believe the exclusion of share-based payment expense in our calculations of SAC, as adjusted, per gross subscriber addition and customer service and billing expenses, as adjusted, per average subscriber is useful given the significant variation in expense that can result from changes in the fair market value of our common stock, the effect of which is unrelated to the operational conditions that give rise to variations in the components of our subscriber acquisition costs and customer service and billing expenses. Specifically, the exclusion of share-based payment expense in our calculation of SAC, as adjusted, per gross subscriber addition is critical in being able to understand the economic impact of the direct costs incurred to acquire a subscriber and the effect over time as economies of scale are reached.

These non-GAAP financial measures are used in addition to and in conjunction with results presented in accordance with GAAP. These non-GAAP financial measures may be susceptible to varying calculations; may not be comparable to other similarly titled measures of other companies; and should not be considered in isolation, as a substitute for, or superior to measures of financial performance prepared in accordance with GAAP.

- (8) We refer to net loss before taxes, interest and investment income, interest expense, net of amounts capitalized, loss from redemption of debt, loss on investments, other expense (income), impairment of parts, restructuring and related costs; depreciation and amortization, and share-based payment expense as adjusted income (loss) from operations. Adjusted income (loss) from operations is not a measure of financial performance under U.S.

GAAP. We believe adjusted income (loss) from operations is a useful measure of our operating performance. We use adjusted income (loss) from operations for budgetary and planning purposes; to assess the relative profitability and on-going performance of our consolidated operations; to compare our performance from period — to-period; and to compare our performance to that of our competitors. We also believe adjusted income (loss) from operations is useful to investors to compare our operating performance to the performance of other communications, entertainment and media companies. We believe that investors use current and projected adjusted income (loss) from operations to estimate our current or prospective enterprise value and to make investment decisions.

Because we fund and build-out our satellite radio system through the periodic raising and expenditure of large amounts of capital, our results of operations reflect significant charges for interest and depreciation expense. We believe adjusted income (loss) from operations provides useful information about the operating performance of our business apart from the costs associated with our capital structure and physical plant. The exclusion of interest and depreciation and amortization expense is useful given fluctuations in interest rates and significant variation in depreciation and amortization expense that can result from the amount and timing of capital expenditures and potential variations in estimated useful lives, all of which can vary widely across different industries or among companies within the same industry. We believe the exclusion of taxes is appropriate for comparability purposes as the tax positions of companies can vary because of their differing abilities to take advantage of tax benefits and because of the tax policies of the various jurisdictions in which they operate. We believe the exclusion of restructuring and related costs and impairment of goodwill is useful given the non-recurring nature of these transactions. We also believe the exclusion of share-based payment expense is useful given the significant variation in expense that can result from changes in the fair market value of our common stock. To compensate for the exclusion of taxes, other income (expense), depreciation and amortization and share-based payment expense, we separately measure and budget for these items.

There are material limitations associated with the use of adjusted income (loss) from operations in evaluating our company compared with net loss, which reflects overall financial performance, including the effects of taxes, other income (expense), depreciation and amortization, restructuring and related costs, impairment of goodwill and share-based payment expense. We use adjusted income (loss) from operations to supplement GAAP results to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. Investors that wish to compare and evaluate our operating results after giving effect for these costs, should refer to net loss as disclosed in our audited consolidated statements of operations. Since adjusted income (loss) from operations is a non-GAAP financial measure, our calculation of adjusted income (loss) from operations may be susceptible to varying calculations; may not be comparable to other similarly titled measures of other companies; and should not be considered in isolation, as a substitute for, or superior to measures of financial performance prepared in accordance with GAAP.

The reconciliation of the pro forma unadjusted net loss to the pro forma adjusted income (loss) from operations is calculated as follows (see footnotes for reconciliation of the pro forma amounts to their respective GAAP amounts):

	Unaudited Pro Forma For the Years Ended December 31,		
	2008	2007	2006
Reconciliation of net loss to adjusted income (loss) from operations:			
Net loss . . . . .	\$(902,335)	\$(1,247,633)	\$(1,823,739)
Add back net loss items excluded from adjusted income (loss) from operations:			
Interest and investment income . . . . .	(12,092)	(34,654)	(54,984)
Interest expense, net of amounts capitalized . . . . .	235,655	186,933	185,336
Income tax expense . . . . .	3,988	1,496	2,051
Loss from redemption of debt . . . . .	98,203	3,693	122,189
Loss on investments . . . . .	43,517	56,156	104,246
Other expense (income) . . . . .	16,142	9,482	(5,921)
Loss from operations . . . . .	(516,922)	(1,024,527)	(1,470,822)
Impairment of parts . . . . .	—	—	10,917
Restructuring and related costs . . . . .	10,434	—	—
Depreciation and amortization . . . . .	245,571	293,976	274,629
Share-based payment expense . . . . .	124,619	165,099	505,964
Adjusted income (loss) from operations . . . . .	<u>\$(136,298)</u>	<u>\$ (565,452)</u>	<u>\$ (679,312)</u>

There are material limitations associated with the use of a pro forma unadjusted results of operations in evaluating our company compared with our GAAP Results of operations, which reflects overall financial performance. We use pro forma unadjusted results of operations to supplement GAAP results to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. Investors that wish to compare and evaluate our operating results after giving effect for these costs, should refer to Results of operations as disclosed in our audited consolidated statements of operations. Since pro forma unadjusted results of operations is a non-GAAP financial measure, our calculations may not be comparable to other similarly titled measures of other companies; and should not be considered in isolation, as a substitute for, or superior to measures of financial performance prepared in accordance with GAAP.

(9) The following tables reconcile our GAAP Results of operations to our non-GAAP pro forma unadjusted results of operations:

Unaudited for the Years Ended December 31, 2008					
	As Reported	Predecessor Financial Information	Purchase Price Accounting Adjustments(a)	Allocation of Share-based Payment Expense	Pro Forma
Revenue:					
Subscriber revenue, including effects of rebates . . . . .	\$ 1,543,951	\$ 664,850	\$ 38,533	\$ —	\$2,247,334
Advertising revenue, net of agency fees . . .	47,190	22,743	—	—	69,933
Equipment revenue . . . . .	56,001	13,397	—	—	69,398
Other revenue . . . . .	16,850	30,204	3,021	—	50,075
Total revenue . . . . .	1,663,992	731,194	41,554	—	2,436,740
Operating expenses (depreciation and amortization shown separately below)(1)					
Cost of services:					
Satellite and transmission . . . . .	59,279	46,566	424	(7,084)	99,185
Programming and content . . . . .	312,189	117,156	34,667	(17,374)	446,638
Revenue share and royalties . . . . .	280,852	166,606	30,504	—	477,962
Customer service and billing . . . . .	165,036	82,947	193	(3,981)	244,195
Cost of equipment . . . . .	46,091	20,013	—	—	66,104
Sales and marketing . . . . .	231,937	126,054	5,393	(21,088)	342,296
Subscriber acquisition costs . . . . .	371,343	174,083	31,714	(14)	577,126
General and administrative . . . . .	213,142	116,444	1,083	(63,637)	267,032
Engineering, design and development . . . .	40,496	23,045	400	(11,441)	52,500
Impairment of goodwill . . . . .	4,766,190	—	(4,766,190)	—	—
Depreciation and amortization . . . . .	203,752	88,749	(46,930)	—	245,571
Share-based payment expense . . . . .	—	—	—	124,619	124,619
Restructuring and related costs . . . . .	10,434	—	—	—	10,434
Total operating expenses . . . . .	6,700,741	961,663	(4,708,742)	—	2,953,662
Loss from operations . . . . .	(5,036,749)	(230,469)	4,750,296	—	(516,922)
Other income (expense)					
Interest and investment income . . . . .	9,079	3,013	—	—	12,092
Interest expense, net of amounts capitalized . . . . .	(144,833)	(73,937)	(16,885)	—	(235,655)
Loss from redemption of debt . . . . .	(98,203)	—	—	—	(98,203)
Loss on investments . . . . .	(30,507)	(13,010)	—	—	(43,517)
Other (expense) income . . . . .	(9,599)	(6,543)	—	—	(16,142)
Total other expense . . . . .	(274,063)	(90,477)	(16,885)	—	(381,425)
Loss before income taxes . . . . .	(5,310,812)	(320,946)	4,733,411	—	(898,347)
Income tax expense . . . . .	(2,476)	(1,512)	—	—	(3,988)
Net loss . . . . .	<u>\$(5,313,288)</u>	<u>\$(322,458)</u>	<u>\$ 4,733,411</u>	<u>\$ —</u>	<u>\$ (902,335)</u>

(1) Amounts related to share-based payment expense included in operating expenses were as follows:

Satellite and transmission . . . . .	\$ 4,236	\$ 2,745	\$ 103	\$—	\$ 7,084
Programming and content . . . . .	12,148	4,949	277	—	17,374
Customer service and billing . . . . .	1,920	1,869	192	—	3,981
Sales and marketing . . . . .	13,541	7,047	500	—	21,088
Subscriber acquisition costs . . . . .	14	—	—	—	14
General and administrative . . . . .	49,354	13,200	1,083	—	63,637
Engineering, design and development . . . . .	6,192	4,675	574	—	11,441
Total share-based payment expense . . . . .	<u>\$87,405</u>	<u>\$34,485</u>	<u>\$2,729</u>	<u>\$—</u>	<u>\$124,619</u>

(a) Includes impairment of goodwill.

**Unaudited for the Years Ended December 31, 2007**

	<b>As Reported</b>	<b>Predecessor Financial Information</b>	<b>Allocation of Share-based Payment Expense</b>	<b>Pro Forma</b>
Revenue:				
Subscriber revenue, including effects of rebates. . .	\$ 854,933	\$1,024,833	\$ —	\$ 1,879,766
Advertising revenue, net of agency fees . . . . .	34,192	39,148	—	73,340
Equipment revenue. . . . .	29,281	28,333	—	57,614
Other revenue . . . . .	3,660	44,228	—	47,888
Total revenue. . . . .	922,066	1,136,542	—	2,058,608
Operating expenses (depreciation and amortization shown separately below)(1)				
Cost of services:				
Satellite and transmission . . . . .	27,907	81,036	(7,222)	101,721
Programming and content . . . . .	236,059	183,900	(18,498)	401,461
Revenue share and royalties . . . . .	146,715	256,344	—	403,059
Customer service and billing. . . . .	93,817	126,776	(3,191)	217,402
Cost of equipment . . . . .	35,817	62,003	—	97,820
Sales and marketing . . . . .	183,213	269,930	(40,059)	413,084
Subscriber acquisition costs . . . . .	407,642	259,143	(12,010)	654,775
General and administrative . . . . .	155,863	188,574	(72,606)	271,831
Engineering, design and development . . . . .	41,343	33,077	(11,513)	62,907
Depreciation and amortization . . . . .	106,780	187,196	—	293,976
Share-based payment expense. . . . .	—	—	165,099	165,099
Total operating expenses . . . . .	1,435,156	1,647,979	—	3,083,135
Loss from operations . . . . .	(513,090)	(511,437)	—	(1,024,527)
Other income (expense)				
Interest and investment income . . . . .	20,570	14,084	—	34,654
Interest expense, net of amounts capitalized . . . .	(70,328)	(116,605)	—	(186,933)
Loss from redemption of debt. . . . .	—	(3,693)	—	(3,693)
Loss on investments . . . . .	—	(56,156)	—	(56,156)
Other (expense) income . . . . .	31	(9,513)	—	(9,482)
Total other expense . . . . .	(49,727)	(171,883)	—	(221,610)
Loss before income taxes . . . . .	(562,817)	(683,320)	—	(1,246,137)
Income tax expense . . . . .	(2,435)	939	—	(1,496)
Net loss . . . . .	<u>\$ (565,252)</u>	<u>\$ (682,381)</u>	<u>\$ —</u>	<u>\$(1,247,633)</u>

(1) Amounts related to share-based payment expense included in operating expenses were as follows:

Satellite and transmission . . . . .	\$ 2,198	\$ 5,024	\$—	\$ 7,222
Programming and content . . . . .	9,643	8,855	—	18,498
Customer service and billing . . . . .	708	2,483	—	3,191
Sales and marketing . . . . .	15,607	24,452	—	40,059
Subscriber acquisition costs . . . . .	2,843	9,167	—	12,010
General and administrative . . . . .	44,317	28,289	—	72,606
Engineering, design and development . . . . .	3,584	7,929	—	11,513
Total share-based payment expense. . . . .	<u>\$78,900</u>	<u>\$86,199</u>	<u>\$—</u>	<u>\$165,099</u>

**Unaudited for the Years Ended December 31, 2006**

	<u>As Reported</u>	<u>Predecessor Financial Information</u>	<u>Allocation of Share-based Payment Expense</u>	<u>Pro Forma</u>
Revenue:				
Subscriber revenue, including effects of rebates . .	\$ 575,404	\$ 841,818	\$ —	\$ 1,417,222
Advertising revenue, net of agency fees . . . . .	31,044	35,330	—	66,374
Equipment revenue . . . . .	26,798	21,720	—	48,518
Other revenue . . . . .	3,989	34,549	—	38,538
Total revenue . . . . .	637,235	933,417	—	1,570,652
Operating expenses (depreciation and amortization shown separately below)(1)				
Cost of services:				
Satellite and transmission . . . . .	41,797	72,068	(8,097)	105,768
Programming and content . . . . .	520,424	165,196	(332,652)	352,968
Revenue share and royalties . . . . .	69,918	149,010	—	218,928
Customer service and billing . . . . .	76,462	104,871	(2,150)	179,183
Cost of equipment . . . . .	35,233	48,949	—	84,182
Sales and marketing . . . . .	203,682	241,942	(30,640)	414,984
Subscriber acquisition costs . . . . .	451,614	224,862	(31,898)	644,578
General and administrative . . . . .	129,953	123,309	(80,477)	172,785
Engineering, design and development . . . . .	70,127	37,428	(20,050)	87,505
Depreciation and amortization . . . . .	105,749	168,880	—	274,629
Share-based payment expense . . . . .	—	—	505,964	505,964
Total operating expenses . . . . .	1,704,959	1,336,515	—	3,041,474
Loss from operations . . . . .	(1,067,724)	(403,098)	—	(1,470,822)
Other income (expense)				
Interest and investment income . . . . .	33,320	21,664	—	54,984
Interest expense, net of amounts capitalized . . . .	(64,032)	(121,304)	—	(185,336)
Loss from redemption of debt . . . . .	—	(122,189)	—	(122,189)
Loss on investments . . . . .	(4,445)	(99,801)	—	(104,246)
Other (expense) income . . . . .	79	5,842	—	5,921
Total other expense . . . . .	(35,078)	(315,788)	—	(350,866)
Loss before income taxes . . . . .	(1,102,802)	(718,886)	—	(1,821,688)
Income tax expense . . . . .	(2,065)	14	—	(2,051)
Net loss . . . . .	<u><u>\$(1,104,867)</u></u>	<u><u>\$ (718,872)</u></u>	<u><u>\$ —</u></u>	<u><u>\$(1,823,739)</u></u>

(1) Amounts related to share-based payment expense included in operating expenses were as follows:

Satellite and transmission . . . . .	\$ 2,568	\$ 5,529	\$—	\$ 8,097
Programming and content . . . . .	321,774	10,878	—	332,652
Customer service and billing . . . . .	812	1,338	—	2,150
Sales and marketing . . . . .	19,543	11,097	—	30,640
Subscriber acquisition costs . . . . .	31,898	—	—	31,898
General and administrative . . . . .	49,928	30,549	—	80,477
Engineering, design and development . . . . .	11,395	8,655	—	20,050
Total share-based payment expense . . . . .	<u><u>\$437,918</u></u>	<u><u>\$68,046</u></u>	<u><u>\$—</u></u>	<u><u>\$505,964</u></u>

- (10) ARPU is derived from total earned subscriber revenue and net advertising revenue, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. ARPU is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Pro Forma For the Three Months Ended December 31,		
	2008	2007	2006
Subscriber revenue . . . . .	\$ 585,534	\$ 499,109	\$ 392,211
Net advertising revenue . . . . .	15,776	20,571	19,496
Total subscriber and net advertising revenue . . . . .	<u>\$ 601,310</u>	<u>\$ 519,680</u>	<u>\$ 411,707</u>
Daily weighted average number of subscribers . . . . .	18,910,689	16,629,079	12,679,925
ARPU . . . . .	\$ 10.60	\$ 10.42	\$ 10.82

- (11) SAC, as adjusted, per gross subscriber addition is derived from subscriber acquisition costs and margins from the direct sale of radios and accessories, excluding share-based payment expense divided by the number of gross subscriber additions for the period. SAC, as adjusted, per gross subscriber addition is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Pro Forma For the Three Months Ended December 31,		
	2008	2007	2006
Subscriber acquisition cost . . . . .	\$ 132,731	\$ 190,090	\$ 191,018
Less: share-based payment expense granted to third parties and employees . . . . .	—	(9,323)	(1,150)
Less/Add: margin from direct sales of radios and accessories . . . . .	(12,628)	12,201	16,123
SAC, as adjusted . . . . .	<u>\$ 120,103</u>	<u>\$ 192,968</u>	<u>\$ 205,991</u>
Gross subscriber additions . . . . .	1,713,210	2,336,640	2,292,172
SAC, as adjusted, per gross subscriber addition . . . . .	\$ 70	\$ 83	\$ 90

- (12) Customer service and billing expenses, as adjusted, per average subscriber is derived from total customer service and billing expenses, excluding share-based payment expense, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. Customer service and billing expenses, as adjusted, per average subscriber is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Pro Forma For the Three Months Ended December 31,		
	2008	2007	2006
Customer service and billing expenses . . . . .	\$ 67,906	\$ 65,991	\$ 54,762
Less: share-based payment expense . . . . .	(870)	(985)	(782)
Customer service and billing expenses, as adjusted . . .	<u>\$ 67,036</u>	<u>\$ 65,006</u>	<u>\$ 53,980</u>
Daily weighted average number of subscribers . . . . .	18,910,689	16,629,079	12,679,925
Customer service and billing expenses, as adjusted, per average subscriber . . . . .	\$ 1.18	\$ 1.30	\$ 1.42



(13) Free cash flow is calculated as follows:

	Unaudited Pro Forma For the Three Months Ended December 31,		
	2008	2007	2006
Net cash provided by operating activities . . . . .	\$ 64,195	\$ 30,957	\$ 77,908
Additions to property and equipment . . . . .	(27,846)	(18,954)	(113,271)
Merger related costs . . . . .	(10,472)	(6,680)	—
Restricted and other investment activity . . . . .	—	82	1,575
Free cash flow . . . . .	<u>\$ 25,877</u>	<u>\$ 5,405</u>	<u>\$ (33,788)</u>

(14) We refer to net loss before taxes, interest and investment, interest expense, net of amounts capitalized, loss from redemption of debt, loss on investments, other expense (income), restructuring and related costs, depreciation and amortization, expense (income) and share-based payment expense as adjusted income (loss) from operations. Adjusted income (loss) from operations is not a measure of financial performance under U.S. GAAP. We believe adjusted income (loss) from operations is a useful measure of our operating performance. We use adjusted income (loss) from operations for budgetary and planning purposes; to assess the relative profitability and on-going performance of our consolidated operations; to compare our performance from period-to-period; and to compare our performance to that of our competitors. We also believe adjusted income (loss) from operations is useful to investors to compare our operating performance to the performance of other communications, entertainment and media companies. We believe that investors use current and projected adjusted income (loss) from operations to estimate our current or prospective enterprise value and to make investment decisions.

Because we fund and build-out our satellite radio system through the periodic raising and expenditure of large amounts of capital, our results of operations reflect significant charges for interest and depreciation expense. We believe adjusted income (loss) from operations provides useful information about the operating performance of our business apart from the costs associated with our capital structure and physical plant. The exclusion of interest and depreciation and amortization expense is useful given fluctuations in interest rates and significant variation in depreciation and amortization expense that can result from the amount and timing of capital expenditures and potential variations in estimated useful lives, all of which can vary widely across different industries or among companies within the same industry. We believe the exclusion of taxes is appropriate for comparability purposes as the tax positions of companies can vary because of their differing abilities to take advantage of tax benefits and because of the tax policies of the various jurisdictions in which they operate. We believe the exclusion of restructuring and related costs and impairment of goodwill is useful given the non-recurring nature of these transactions. We also believe the exclusion of share-based payment expense is useful given the significant variation in expense that can result from changes in the fair market value of our common stock. To compensate for the exclusion of taxes, other income (expense), depreciation and amortization and share-based payment expense, we separately measure and budget for these items.

There are material limitations associated with the use of adjusted income (loss) from operations in evaluating our company compared with net loss, which reflects overall financial performance, including the effects of taxes, other income (expense), depreciation and amortization, restructuring and related costs, impairment of goodwill and share-based payment expense. We use adjusted income (loss) from operations to supplement GAAP results to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. Investors that wish to compare and evaluate our operating results after giving effect for these costs, should refer to net loss as disclosed in our audited consolidated statements of operations. Since adjusted income (loss) from operations is a non-GAAP financial measure, our calculation of adjusted income (loss) from operations may be susceptible to varying calculations; may not be comparable to other similarly titled measures of other companies; and should not be considered in isolation, as a substitute for, or superior to measures of financial performance prepared in accordance with GAAP.

The reconciliation of the pro forma unadjusted net loss to the pro forma adjusted income (loss) from operations is calculated as follows (See footnotes for reconciliation of the pro forma amounts to their respective GAAP amounts):

Unaudited Pro Forma For the Three Months Ended December 31,			
	2008	2007	2006
Reconciliation of net loss to adjusted income (loss) from operations:			
Net loss . . . . .	\$(248,468)	\$(405,041)	\$(502,321)
Add back net loss items excluded from adjusted income (loss) from operations:			
Interest and investment expense (income) . . . . .	90	(6,978)	(10,259)
Interest expense, net of amounts capitalized . . . . .	71,274	48,703	50,285
Income tax expense . . . . .	175	901	1,393
Loss from redemption of debt . . . . .	98,203	728	21,443
Loss on investments . . . . .	27,418	3,768	62,932
Other expense (income) . . . . .	5,664	5,834	(288)
Loss from operations . . . . .	(45,644)	(352,085)	(376,815)
Restructuring and related costs . . . . .	2,977	—	—
Depreciation and amortization . . . . .	49,519	75,045	71,538
Share-based payment expense . . . . .	24,945	52,897	68,649
Adjusted income (loss) from operations . . . . .	<u>\$ 31,797</u>	<u>\$(224,143)</u>	<u>\$(236,628)</u>

There are material limitations associated with the use of a pro forma unadjusted results of operations in evaluating our company compared with our GAAP Results of operations, which reflects overall financial performance. We use pro forma unadjusted results of operations to supplement GAAP results to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. Investors that wish to compare and evaluate our operating results after giving effect for these costs, should refer to results of operations as disclosed in our audited consolidated statements of operations. Since pro forma unadjusted results of operations is a non-GAAP financial measure, our calculations may not be comparable to other similarly titled measures of other companies; and should not be considered in isolation, as a substitute for, or superior to measures of financial performance prepared in accordance with GAAP.

(15) The following tables reconcile our GAAP Results of operations to our non-GAAP pro forma unadjusted results of operations:

Unaudited for the Three Months Ended December 31, 2008				
	As Reported	Purchase Price Accounting Adjustments(a)	Allocation of Share-based Payment Expense	Pro Forma
Revenue:				
Subscriber revenue, including effects of rebates . . .	\$ 565,435	\$ 20,099	\$ —	\$ 585,534
Advertising revenue, net of agency fees . . . . .	15,776	—	—	15,776
Equipment revenue . . . . .	30,712	—	—	30,712
Other revenue . . . . .	10,260	1,826	—	12,086
Total revenue . . . . .	622,183	21,925	—	644,108
Operating expenses (depreciation and amortization shown separately below)(1)				
Cost of services:				
Satellite and transmission . . . . .	24,481	(214)	(1,416)	22,851
Programming and content . . . . .	89,214	20,755	(4,754)	105,215
Revenue share and royalties . . . . .	103,217	19,494	—	122,711
Customer service and billing . . . . .	67,818	88	(870)	67,036
Cost of equipment . . . . .	18,084	—	—	18,084
Sales and marketing . . . . .	80,699	3,312	(2,299)	81,712
Subscriber acquisition costs . . . . .	113,512	19,219	—	132,731
General and administrative . . . . .	64,586	306	(13,301)	51,591
Engineering, design and development . . . . .	12,404	281	(2,305)	10,380
Impairment of goodwill . . . . .	15,331	(15,331)	—	—
Depreciation and amortization . . . . .	82,958	(33,439)	—	49,519
Share-based payment expense . . . . .	—	—	24,945	24,945
Restructuring and related costs . . . . .	2,977	—	—	2,977
Total operating expenses . . . . .	675,281	14,471	—	689,752
Loss from operations . . . . .	(53,098)	7,454	—	(45,644)
Other income (expense)				
Interest and investment (expense) . . . . .	(90)	—	—	(90)
Interest expense, net of amounts capitalized . . . . .	(61,196)	(10,078)	—	(71,274)
Loss from redemption of debt . . . . .	(98,203)	—	—	(98,203)
Loss on investments . . . . .	(27,418)	—	—	(27,418)
Other (expense) income . . . . .	(5,664)	—	—	(5,664)
Total other expense . . . . .	(192,571)	(10,078)	—	(202,649)
Loss before income taxes . . . . .	(245,669)	(2,624)	—	(248,293)
Income tax expense . . . . .	(175)	—	—	(175)
Net loss . . . . .	<u>\$ (245,844)</u>	<u>\$ (2,624)</u>	<u>\$ —</u>	<u>\$ (248,468)</u>

(1) Amounts related to share-based payment expense included in operating expenses were as follows:

Satellite and transmission . . . . .	\$ 1,349	\$ 67	\$ —	\$ 1,416
Programming and content . . . . .	4,672	82	—	4,754
Customer service and billing . . . . .	783	87	—	870
Sales and marketing . . . . .	2,165	134	—	2,299
General and administrative . . . . .	12,995	306	—	13,301
Engineering, design and development . . . . .	2,023	282	—	2,305
Total share-based payment expense . . . . .	<u>\$23,987</u>	<u>\$958</u>	<u>\$ —</u>	<u>\$24,945</u>

(a) Includes impairment of goodwill.

Unaudited for the Three Months Ended December 31, 2007				
	As Reported	Predecessor Financial Information	Allocation of Share-based Payment Expense	Pro Forma
Revenue:				
Subscriber revenue, including effects of rebates . . . . .	\$ 227,658	\$ 271,451	\$ —	\$ 499,109
Advertising revenue, net of agency fees . . . . .	9,770	10,801	—	20,571
Equipment revenue . . . . .	12,065	13,068	—	25,133
Other revenue . . . . .	323	12,379	—	12,702
Total revenue . . . . .	249,816	307,699	—	557,515
Operating expenses (depreciation and amortization shown separately below)(1)				
Cost of services:				
Satellite and transmission . . . . .	5,175	20,304	(1,782)	23,697
Programming and content . . . . .	62,735	51,297	(4,956)	109,076
Revenue share and royalties . . . . .	56,762	106,779	—	163,541
Customer service and billing . . . . .	29,288	36,703	(985)	65,006
Cost of equipment . . . . .	15,886	21,448	—	37,334
Sales and marketing . . . . .	56,866	83,693	(16,848)	123,711
Subscriber acquisition costs . . . . .	100,062	90,028	(9,323)	180,767
General and administrative . . . . .	37,212	43,106	(16,095)	64,223
Engineering, design and development . . . . .	7,946	9,265	(2,908)	14,303
Depreciation and amortization . . . . .	27,638	47,407	—	75,045
Share-based payment expense . . . . .	—	—	52,897	52,897
Total operating expenses . . . . .	399,570	510,030	—	909,600
Loss from operations . . . . .	(149,754)	(202,331)	—	(352,085)
Other income (expense)				
Interest and investment income . . . . .	4,171	2,807	—	6,978
Interest expense, net of amounts capitalized . . . . .	(19,887)	(28,816)	—	(48,703)
Loss from redemption of debt . . . . .	—	(728)	—	(728)
Loss on investments . . . . .	—	(3,768)	—	(3,768)
Other (expense) income . . . . .	17	(5,851)	—	(5,834)
Total other expense . . . . .	(15,699)	(36,356)	—	(52,055)
Loss before income taxes . . . . .	(165,453)	(238,687)	—	(404,140)
Income tax expense . . . . .	(770)	(131)	—	(901)
Net loss . . . . .	<u>\$(166,223)</u>	<u>\$(238,818)</u>	<u>\$ —</u>	<u>\$(405,041)</u>

(1) Amounts related to share-based payment expense included in operating expenses were as follows:

Satellite and transmission . . . . .	\$ 364	\$ 1,418	\$—	\$ 1,782
Programming and content . . . . .	2,786	2,170	—	4,956
Customer service and billing . . . . .	165	820	—	985
Sales and marketing . . . . .	539	16,309	—	16,848
Subscriber acquisition costs . . . . .	156	9,167	—	9,323
General and administrative . . . . .	10,261	5,834	—	16,095
Engineering, design and development . . . . .	625	2,283	—	2,908
Total share-based payment expense . . . . .	<u>\$14,896</u>	<u>\$38,001</u>	<u>\$—</u>	<u>\$52,897</u>

Unaudited for the Three Months Ended December 31, 2006				
	As Reported	Predecessor Financial Information	Allocation of Share-based Payment Expense	Pro Forma
Revenue:				
Subscriber revenue, including effects of rebates . . . . .	\$ 167,210	\$ 225,001	\$ —	\$ 392,211
Advertising revenue, net of agency fees . . . . .	8,451	11,045	—	19,496
Equipment revenue . . . . .	16,431	10,076	—	26,507
Other revenue . . . . .	1,288	11,000	—	12,288
Total revenue . . . . .	193,380	257,122	—	450,502
Operating expenses (depreciation and amortization shown separately below)(1)				
Cost of services:				
Satellite and transmission . . . . .	7,518	18,598	(2,507)	23,609
Programming and content . . . . .	80,414	46,427	(28,851)	97,990
Revenue share and royalties . . . . .	21,062	43,405	—	64,467
Customer service and billing . . . . .	25,912	28,850	(782)	53,980
Cost of equipment . . . . .	22,105	20,525	—	42,630
Sales and marketing . . . . .	77,780	77,767	(8,897)	146,650
Subscriber acquisition costs . . . . .	122,196	68,822	(1,150)	189,868
General and administrative . . . . .	32,379	39,491	(22,544)	49,326
Engineering, design and development . . . . .	13,448	9,080	(3,918)	18,610
Depreciation and amortization . . . . .	27,495	44,043	—	71,538
Share-based payment expense . . . . .	—	—	68,649	68,649
Total operating expenses . . . . .	430,309	397,008	—	827,317
Loss from operations . . . . .	(236,929)	(139,886)	—	(376,815)
Other income (expense)				
Interest and investment income . . . . .	6,760	3,499	—	10,259
Interest expense, net of amounts capitalized . . . . .	(15,327)	(34,958)	—	(50,285)
Loss from redemption of debt . . . . .	—	(21,443)	—	(21,443)
Loss on investments . . . . .	—	(62,932)	—	(62,932)
Other (expense) income . . . . .	55	233	—	288
Total other expense . . . . .	(8,512)	(115,601)	—	(124,113)
Loss before income taxes . . . . .	(245,441)	(255,487)	—	(500,928)
Income tax expense . . . . .	(156)	(1,237)	—	(1,393)
Net loss . . . . .	<u>\$(245,597)</u>	<u>\$(256,724)</u>	<u>\$ —</u>	<u>\$(502,321)</u>

(1) Amounts related to share-based payment expense included in operating expenses were as follows:

Satellite and transmission . . . . .	\$ 366	\$ 2,141	\$—	\$ 2,507
Programming and content . . . . .	24,635	4,216	—	28,851
Customer service and billing . . . . .	167	615	—	782
Sales and marketing . . . . .	4,665	4,232	—	8,897
Subscriber acquisition costs . . . . .	1,150	—	—	1,150
General and administrative . . . . .	10,981	11,563	—	22,544
Engineering, design and development . . . . .	661	3,257	—	3,918
Total share-based payment expense . . . . .	<u>\$42,625</u>	<u>\$26,024</u>	<u>\$—</u>	<u>\$68,649</u>

- (16) ARPU is derived from total earned subscriber revenue and net advertising revenue, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. ARPU is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Actual For the Years Ended December 31,		
	2008	2007	2006
Subscriber revenue . . . . .	\$ 1,543,951	\$ 854,933	\$ 575,404
Net advertising revenue . . . . .	47,190	34,192	31,044
Total subscriber and net advertising revenue . . . . .	<u>\$ 1,591,141</u>	<u>\$ 889,125</u>	<u>\$ 606,448</u>
Daily weighted average number of subscribers . . . . .	13,378,035	7,082,927	4,591,693
ARPU . . . . .	\$ 9.91	\$ 10.46	\$ 11.01

- (17) SAC, as adjusted, per gross subscriber addition is derived from subscriber acquisition costs and margins from the direct sale of radios and accessories, excluding share-based payment expense divided by the number of gross subscriber additions for the period. SAC, as adjusted, per gross subscriber addition is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Actual For the Years Ended December 31,		
	2008	2007	2006
Subscriber acquisition cost . . . . .	\$ 371,343	\$ 407,642	\$ 451,614
Less: share-based payment expense granted to third parties and employees . . . . .	(14)	(2,843)	(31,898)
Less/Add: margin from direct sales of radios and accessories . . . . .	(9,910)	6,536	8,435
SAC, as adjusted . . . . .	<u>\$ 361,419</u>	<u>\$ 411,335</u>	<u>\$ 428,151</u>
Gross subscriber additions . . . . .	5,238,042	4,183,901	3,758,159
SAC, as adjusted, per gross subscriber addition . . . . .	\$ 69	\$ 98	\$ 114

- (18) Customer service and billing expenses, as adjusted, per average subscriber is derived from total customer service and billing expenses, excluding share-based payment expense, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. Customer service and billing expenses, as adjusted, per average subscriber is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Actual For the Years Ended December 31,		
	2008	2007	2006
Customer service and billing expenses . . . . .	\$ 165,036	\$ 93,817	\$ 76,462
Less: share-based payment expense . . . . .	(1,920)	(708)	(812)
Customer service and billing expenses, as adjusted . . . . .	<u>\$ 163,116</u>	<u>\$ 93,109</u>	<u>\$ 75,650</u>
Daily weighted average number of subscribers . . . . .	13,378,035	7,082,927	4,591,693
Customer service and billing expenses, as adjusted, per average subscriber . . . . .	\$ 1.02	\$ 1.10	\$ 1.37



(19) Free cash flow is calculated as follows:

	Unaudited Actual For the Years Ended December 31,		
	2008	2007	2006
Net cash used in operating activities . . . . .	\$(152,797)	\$(148,766)	\$(421,702)
Additions to property and equipment . . . . .	(130,551)	(65,264)	(92,674)
Merger related costs . . . . .	(23,519)	(29,444)	—
Restricted and other investment activity . . . . .	<u>62,400</u>	<u>24,850</u>	<u>13,661</u>
Free cash flow . . . . .	<u>\$(244,467)</u>	<u>\$(218,624)</u>	<u>\$(500,715)</u>

(20) We refer to net loss before taxes, interest and investment income, interest expense, net of amounts capitalized, loss from redemption of debt, loss on investments, other expense (income), impairment of parts, restructuring and related costs, impairment of goodwill, depreciation and amortization, and share-based payment expense as adjusted income (loss) from operations. Adjusted income (loss) from operations is not a measure of financial performance under U.S. GAAP. We believe adjusted income (loss) from operations is a useful measure of our operating performance. We use adjusted income (loss) from operations for budgetary and planning purposes; to assess the relative profitability and on-going performance of our consolidated operations; to compare our performance from period — to-period; and to compare our performance to that of our competitors. We also believe adjusted income (loss) from operations is useful to investors to compare our operating performance to the performance of other communications, entertainment and media companies. We believe that investors use current and projected adjusted income (loss) from operations to estimate our current or prospective enterprise value and to make investment decisions.

Because we fund and build-out our satellite radio system through the periodic raising and expenditure of large amounts of capital, our results of operations reflect significant charges for interest and depreciation expense. We believe adjusted income (loss) from operations provides useful information about the operating performance of our business apart from the costs associated with our capital structure and physical plant. The exclusion of interest and depreciation expense is useful given fluctuations in interest rates and significant variation in depreciation and amortization expense that can result from the amount and timing of capital expenditures and potential variations in estimated useful lives, all of which can vary widely across different industries or among companies within the same industry. We believe the exclusion of taxes is appropriate for comparability purposes as the tax positions of companies can vary because of their differing abilities to take advantage of tax benefits and because of the tax policies of the various jurisdictions in which they operate. We believe the exclusion of restructuring and related costs and impairment of goodwill is useful given the non-recurring nature of these transactions. We also believe the exclusion of share-based payment expense is useful given the significant variation in expense that can result from changes in the fair market value of our common stock. To compensate for the exclusion of taxes, other income (expense), depreciation and amortization and share-based payment expense, we separately measure and budget for these items.

There are material limitations associated with the use of adjusted income (loss) from operations in evaluating our company compared with net loss, which reflects overall financial performance, including the effects of taxes, other income (expense), depreciation and share-based payment expense. We use adjusted income (loss) from operations to supplement GAAP results to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. Investors that wish to compare and evaluate our operating results after giving effect for these costs, should refer to net loss as disclosed in our audited consolidated statements of operations. Since adjusted income (loss) from operations is a non-GAAP financial measure, our calculation of adjusted income (loss) from operations may be susceptible to varying calculations; may not be comparable to other similarly titled measures of other companies; and should not be considered in isolation, as a substitute for, or superior to measures of financial performance prepared in accordance with GAAP.

Adjusted income (loss) from operations is calculated as follows:

	Unaudited Actual For the Years Ended December 31,		
	2008	2007	2006
Reconciliation of net loss to adjusted income (loss) from operations:			
Net loss . . . . .	\$(5,313,288)	\$(565,252)	\$(1,104,867)
Add back net loss items excluded from adjusted income (loss) from operations:			
Interest and investment income . . . . .	(9,079)	(20,570)	(33,320)
Interest expense, net of amounts capitalized . . . . .	144,833	70,328	64,032
Income tax expense . . . . .	2,476	2,435	2,065
Loss from redemption of debt . . . . .	98,203	—	—
Loss on investments . . . . .	30,507	—	4,445
Other expense (income) . . . . .	9,599	(31)	(79)
Loss from operations . . . . .	(5,036,749)	(513,090)	(1,067,724)
Impairment of parts . . . . .	—	—	10,917
Restructuring and related costs . . . . .	10,434	—	—
Impairment of goodwill . . . . .	4,766,190	—	—
Depreciation and amortization . . . . .	203,752	106,780	105,749
Share-based payment expense . . . . .	87,405	78,900	437,918
Adjusted income (loss) from operations . . . . .	<u>\$ 31,032</u>	<u>\$(327,410)</u>	<u>\$ (513,140)</u>

- (21) ARPU is derived from total earned subscriber revenue and net advertising revenue, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. ARPU is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Actual For the Three Months Ended December 31,		
	2008	2007	2006
Subscriber revenue . . . . .	\$ 565,435	\$ 227,658	\$ 167,210
Net advertising revenue . . . . .	15,776	9,770	8,451
Total subscriber and net advertising revenue . . . . .	<u>\$ 581,211</u>	<u>\$ 237,428</u>	<u>\$ 175,661</u>
Daily weighted average number of subscribers . . . . .	18,910,689	7,878,574	5,361,322
ARPU . . . . .	\$ 10.24	\$ 10.05	\$ 10.92

- (22) SAC, as adjusted, per gross subscriber addition is derived from subscriber acquisition costs and margins from the direct sale of radios and accessories, excluding share-based payment expense divided by the number of gross subscriber additions for the period. SAC, as adjusted, per gross subscriber addition is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Actual For the Three Months Ended December 31,		
	2008	2007	2006
Subscriber acquisition cost . . . . .	\$ 113,512	\$ 100,062	\$ 122,196
Less: share-based payment expense granted to third parties and employees . . . . .	—	(156)	(1,150)
Less/Add: margin from direct sales of radios and accessories . . . . .	(12,628)	3,821	5,674
SAC, as adjusted . . . . .	<u>\$ 100,884</u>	<u>\$ 103,727</u>	<u>\$ 126,720</u>
Gross subscriber additions . . . . .	1,713,210	1,194,014	1,234,574
SAC, as adjusted, per gross subscriber addition . . . . .	\$ 59	\$ 87	\$ 103

- (23) Customer service and billing expenses, as adjusted, per average subscriber is derived from total customer service and billing expenses, excluding share-based payment expense, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. Customer service and billing expenses, as adjusted, per average subscriber is calculated as follows (in thousands, except for per subscriber amounts):

	Unaudited Actual For the Three Months Ended December 31,		
	2008	2007	2006
Customer service and billing expenses . . . . .	\$ 67,818	\$ 29,288	\$ 25,912
Less: share-based payment expense . . . . .	(783)	(165)	(167)
Customer service and billing expenses, as adjusted . . . . .	<u>\$ 67,035</u>	<u>\$ 29,123</u>	<u>\$ 25,745</u>
Daily weighted average number of subscribers . . . . .	18,910,689	7,878,574	5,361,322
Customer service and billing expenses, as adjusted, per average subscriber . . . . .	\$ 1.18	\$ 1.23	\$ 1.60

- (24) Free cash flow is calculated as follows:

	Unaudited Actual For the Three Months Ended December 31,		
	2008	2007	2006
Net cash provided by operating activities . . . . .	\$ 64,195	\$89,818	\$34,868
Additions to property and equipment . . . . .	(27,846)	(7,377)	(5,459)
Merger related costs . . . . .	(10,472)	(6,680)	—
Restricted and other investment activity . . . . .	—	160	1,000
Free cash flow . . . . .	<u>\$ 25,877</u>	<u>\$75,921</u>	<u>\$30,409</u>

- (25) We refer to net loss before taxes, interest and investment income, interest expense, impairment of goodwill, restructuring and related costs net of amounts capitalized, loss from redemption on debt, loss on investments, other expense (income), depreciation and amortization, and share-based payment expense as adjusted income (loss) from operations. Adjusted income (loss) from operations is not a measure of financial performance under U.S. GAAP. We believe adjusted income (loss) from operations is a useful measure of our operating performance. We use adjusted income (loss) from operations for budgetary and planning purposes; to assess the relative profitability and on-going performance of our consolidated operations; to compare our performance from period-to-period; and to compare our performance to that of our competitors. We also believe adjusted income (loss) from operations is useful to investors to compare our operating performance to the

performance of other communications, entertainment and media companies. We believe that investors use current and projected adjusted income (loss) from operations to estimate our current or prospective enterprise value and to make investment decisions.

Because we fund and build-out our satellite radio system through the periodic raising and expenditure of large amounts of capital, our results of operations reflect significant charges for interest and depreciation expense. We believe adjusted income (loss) from operations provides useful information about the operating performance of our business apart from the costs associated with our capital structure and physical plant. The exclusion of interest and depreciation expense is useful given fluctuations in interest rates and significant variation in depreciation and amortization expense that can result from the amount and timing of capital expenditures and potential variations in estimated useful lives, all of which can vary widely across different industries or among companies within the same industry. We believe the exclusion of taxes is appropriate for comparability purposes as the tax positions of companies can vary because of their differing abilities to take advantage of tax benefits and because of the tax policies of the various jurisdictions in which they operate. We believe the exclusion of restructuring and related costs and impairment of goodwill is useful given the non-recurring nature of these transactions. We also believe the exclusion of share-based payment expense is useful given the significant variation in expense that can result from changes in the fair market value of our common stock. To compensate for the exclusion of taxes, other income (expense), depreciation and amortization and share-based payment expense, we separately measure and budget for these items.

There are material limitations associated with the use of adjusted income (loss) from operations in evaluating our company compared with net loss, which reflects overall financial performance, including the effects of taxes, other income (expense), depreciation and share-based payment expense. We use adjusted income (loss) from operations to supplement GAAP results to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. Investors that wish to compare and evaluate our operating results after giving effect for these costs, should refer to net loss as disclosed in our audited consolidated statements of operations. Since adjusted income (loss) from operations is a non-GAAP financial measure, our calculation of adjusted income (loss) from operations may be susceptible to varying calculations; may not be comparable to other similarly titled measures of other companies; and should not be considered in isolation, as a substitute for, or superior to measures of financial performance prepared in accordance with GAAP.

Adjusted income (loss) from operations is calculated as follows:

	Unaudited Actual For the Three Months Ended December 31,		
	2008	2007	2006
Reconciliation of net loss to adjusted income (loss) from operations:			
net loss . . . . .	\$(245,844)	\$(166,223)	\$(245,597)
Add back net loss items excluded from adjusted income (loss) from operations:			
Interest and investment income . . . . .	90	(4,171)	(6,760)
Interest expense, net of amounts capitalized . . . . .	61,196	19,887	15,327
Income tax expense . . . . .	175	770	156
Loss from redemption of debt . . . . .	98,203	—	—
Loss on investments . . . . .	27,418	—	—
Other expense (income) . . . . .	<u>5,664</u>	<u>(17)</u>	<u>(55)</u>
Loss from operations . . . . .	(53,098)	(149,754)	(236,929)
Impairment of goodwill . . . . .	15,331	—	—
Restructuring and related costs . . . . .	2,977	—	—
Depreciation and amortization . . . . .	82,958	27,638	27,495
Share-based payment expense . . . . .	<u>23,987</u>	<u>14,896</u>	<u>42,625</u>
Adjusted income (loss) from operations . . . . .	<u>\$ 72,155</u>	<u>\$(107,220)</u>	<u>\$(166,809)</u>

## Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock is traded on the Nasdaq Global Select Market under the symbol "SIRI." The following table sets forth the high and low sales price for our common stock, as reported by Nasdaq, for the periods indicated below:

	<u>High</u>	<u>Low</u>
<b>Year ended December 31, 2007</b>		
First Quarter . . . . .	\$4.26	\$3.18
Second Quarter . . . . .	3.25	2.66
Third Quarter . . . . .	3.59	2.71
Fourth Quarter . . . . .	3.94	2.76
<b>Year ended December 31, 2008</b>		
First Quarter . . . . .	\$3.89	\$2.51
Second Quarter . . . . .	2.92	1.80
Third Quarter . . . . .	2.75	0.57
Fourth Quarter . . . . .	0.69	0.08

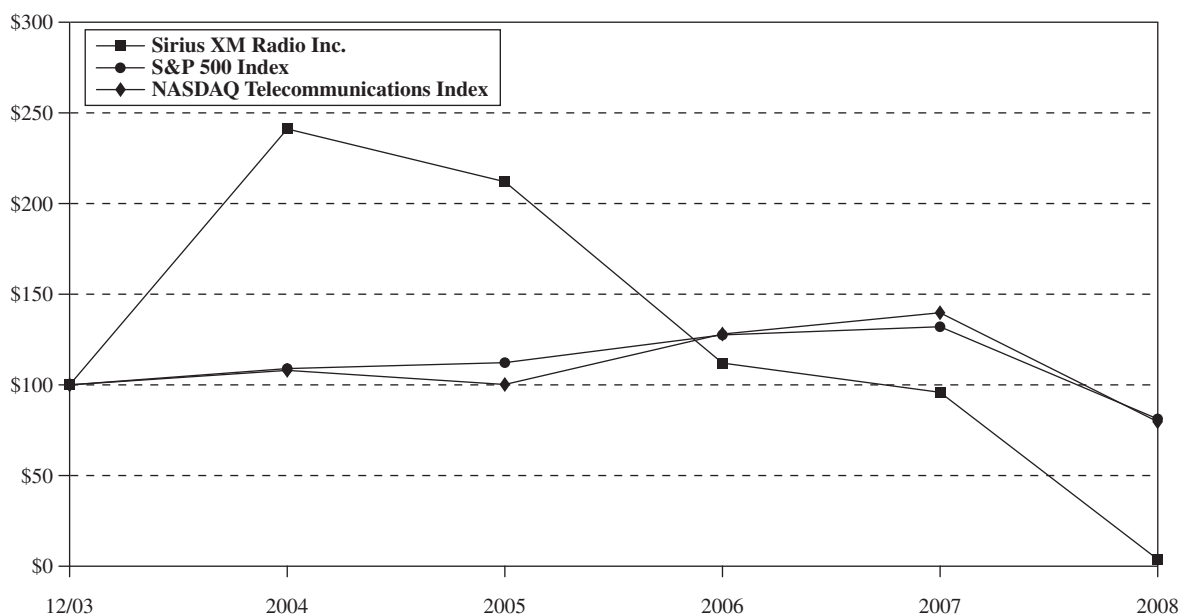
On April 28, 2009, the closing sales price of our common stock on the Nasdaq Global Select Market was \$0.39 per share. On April 28, 2009, there were approximately 850,000 beneficial holders of our common stock.

We have never paid cash dividends on our common stock. We currently intend to retain earnings, if any, for use in our business and do not anticipate paying any cash dividends in the foreseeable future.



## Comparison of Cumulative Total Returns

Set forth below is a graph comparing the cumulative performance of our common stock with the Standard & Poor's Composite-500 Stock Index, or the S&P 500, and the NASDAQ Telecommunications Index from December 31, 2003 to December 31, 2008. The graph assumes that \$100 was invested on December 31, 2003 in each of our common stock, the S&P 500 and the NASDAQ Telecommunications Index and that all dividends were reinvested.



**Stockholder Return Performance Table**

	NASDAQ Telecommunications Index	S&P 500 Index	SIRIUS XM Radio Inc.
December 31, 2003 .....	\$100.00	\$100.00	\$100.00
December 31, 2004 .....	\$108.00	\$108.99	\$241.14
December 31, 2005 .....	\$100.21	\$112.26	\$212.03
December 31, 2006 .....	\$128.03	\$127.55	\$112.03
December 31, 2007 .....	\$139.77	\$132.06	\$ 95.89
December 31, 2008 .....	\$ 79.69	\$ 81.23	\$ 3.80

## Selected Financial Data

Our selected financial data set forth below with respect to the consolidated statements of operations for the years ended December 31, 2008, 2007 and 2006, and with respect to the consolidated balance sheets at December 31, 2008 and 2007, are derived from our audited consolidated financial statements included elsewhere in this Annual Report and Proxy Statement. Our selected financial data set forth below with respect to the consolidated statements of operations for the years ended December 31, 2005 and 2004, and with respect to the consolidated balance sheets at December 31, 2006, 2005 and 2004 are derived from our audited consolidated financial statements, which are not included in this Annual Report and Proxy Statement. This selected financial data should be read in conjunction with the Consolidated Financial Statements and related notes thereto included elsewhere in this Annual Report and Proxy Statement and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

	For the Years Ended December 31,				
	2008(1)	2007	2006	2005	2004
	(In thousands, except share and per share data)				
<b>Statements of Operations Data:</b>					
Total revenue . . . . .	\$ 1,663,992	\$ 922,066	\$ 637,235	\$ 242,245	\$ 66,854
Loss from operations . . . . .	(5,036,749)	(513,090)	(1,067,724)	(829,140)	(678,304)
Net loss . . . . .	(5,313,288)	(565,252)	(1,104,867)	(862,997)	(712,162)
Net loss per share (basic and diluted). . . . .	\$ (2.45)	\$ (0.39)	\$ (0.79)	\$ (0.65)	\$ (0.57)
Weighted average common shares outstanding (basic and diluted) . . .	2,169,489	1,462,967	1,402,619	1,325,739	1,238,585
<b>Balance Sheet Data:</b>					
Cash and cash equivalents. . . . .	\$ 380,446	\$ 438,820	\$ 393,421	\$ 762,007	\$ 753,891
Restricted investments . . . . .	141,250	53,000	77,850	107,615	97,321
Total assets . . . . .	7,490,695	1,694,149	1,658,528	2,085,362	1,957,613
Long-term debt, net of current portion . . . . .	2,851,740	1,278,617	1,068,249	1,084,437	656,274
Stockholders' (deficit) equity(2) . . . .	8,537	(792,737)	(389,071)	324,968	1,000,633

(1) The 2008 results and balances reflect the results and balances of XM Holdings from the date of the Merger and a \$4,766,190 goodwill impairment charge.

(2) No cash dividends were declared or paid in any of the periods presented.

## Quantitative and Qualitative Disclosure About Market Risks

As of December 31, 2008, we did not have any derivative financial instruments. We do not hold or issue any free-standing derivatives. We hold investments in marketable securities, which consist of United States government notes and certificates of deposit. We classify our marketable securities as available-for-sale. We hold an investment in auction rate certificates which are classified as available-for-sale. These securities are consistent with the investment objectives contained within our investment policy. The basic objectives of our investment policy are the preservation of capital, maintaining sufficient liquidity to meet operating requirements and maximizing yield.

Our debt includes fixed interest rates and the fair market value of the debt is sensitive to changes in interest rates. Under our current policies, we do not use interest rate derivative instruments to manage our exposure to interest rate fluctuations.

## Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

There have been no changes in or disagreements with accountants on accounting or financial disclosure in the time period covered by this Annual Report and Proxy Statement.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders Sirius XM Radio Inc. and subsidiaries:

We have audited the accompanying consolidated balance sheet of Sirius XM Radio Inc. and subsidiaries as of December 31, 2008, and the related consolidated statements of operations, stockholders' equity (deficit) and comprehensive loss, and cash flows for the year then ended. In connection with our audit of the consolidated financial statements, we also have audited the accompanying financial statement schedule. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Sirius XM Radio Inc. and subsidiaries as of December 31, 2008, and the results of their operations and their cash flows for the year then ended, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Sirius XM Radio Inc. and subsidiaries' internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 10, 2009 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

New York, New York  
March 10, 2009

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders Sirius XM Radio Inc. and subsidiaries:

We have audited Sirius XM Radio Inc. and subsidiaries' internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Sirius XM Radio Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying *Management's Report on Internal Control over Financial Reporting*. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Sirius XM Radio Inc. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Sirius XM Radio Inc. and subsidiaries as of December 31, 2008, and the related consolidated statements of operations, stockholders' equity (deficit) and comprehensive loss, and cash flows for the year then ended, and our report dated March 10, 2009 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

New York, New York  
March 10, 2009

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Sirius XM Radio Inc. (formerly Sirius Satellite Radio Inc.) and Subsidiaries:

We have audited the accompanying consolidated balance sheet of Sirius XM Radio Inc. and Subsidiaries as of December 31, 2007, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the two years in the period ended December 31, 2007. Our audits also included the accompanying financial statement schedule. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Sirius XM Radio Inc. and Subsidiaries at December 31, 2007, and the consolidated results of their operations and their cash flows for each of the two years in the period ended December 31, 2007, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

*Ernst & Young LLP*

New York, NY  
February 29, 2008,  
except Note 18 related to the 2007 and 2006 financial information,  
as to which the date is March 10, 2009.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	For the Years Ended December 31,		
	2008	2007	2006
	(In thousands, except per share data)		
Revenue:			
Subscriber revenue, including effects of rebates . . . . .	\$ 1,543,951	\$ 854,933	\$ 575,404
Advertising revenue, net of agency fees . . . . .	47,190	34,192	31,044
Equipment revenue . . . . .	56,001	29,281	26,798
Other revenue . . . . .	16,850	3,660	3,989
Total revenue . . . . .	1,663,992	922,066	637,235
Operating expenses (depreciation and amortization shown separately below)(1)			
Cost of services:			
Satellite and transmission . . . . .	59,279	27,907	41,797
Programming and content . . . . .	312,189	236,059	520,424
Revenue share and royalties . . . . .	280,852	146,715	69,918
Customer service and billing . . . . .	165,036	93,817	76,462
Cost of equipment . . . . .	46,091	35,817	35,233
Sales and marketing . . . . .	231,937	183,213	203,682
Subscriber acquisition costs . . . . .	371,343	407,642	451,614
General and administrative . . . . .	213,142	155,863	129,953
Engineering, design and development . . . . .	40,496	41,343	70,127
Impairment of goodwill . . . . .	4,766,190	—	—
Depreciation and amortization . . . . .	203,752	106,780	105,749
Restructuring and related costs . . . . .	10,434	—	—
Total operating expenses . . . . .	6,700,741	1,435,156	1,704,959
Loss from operations . . . . .	(5,036,749)	(513,090)	(1,067,724)
Other income (expense)			
Interest and investment income . . . . .	9,079	20,570	33,320
Interest expense, net of amounts capitalized . . . . .	(144,833)	(70,328)	(64,032)
Loss from redemption of debt . . . . .	(98,203)	—	—
Loss on investments . . . . .	(30,507)	—	(4,445)
Other (expense) income . . . . .	(9,599)	31	79
Total other expense . . . . .	(274,063)	(49,727)	(35,078)
Loss before income taxes . . . . .	(5,310,812)	(562,817)	(1,102,802)
Income tax expense . . . . .	(2,476)	(2,435)	(2,065)
Net loss . . . . .	<u><u>\$ (5,313,288)</u></u>	<u><u>\$ (565,252)</u></u>	<u><u>\$ (1,104,867)</u></u>
Net loss per common share (basic and diluted) . . . . .	<u><u>\$ (2.45)</u></u>	<u><u>\$ (0.39)</u></u>	<u><u>\$ (0.79)</u></u>
Weighted average common shares outstanding (basic and diluted) . .	<u><u>2,169,489</u></u>	<u><u>1,462,967</u></u>	<u><u>1,402,619</u></u>

(1) Amounts related to share-based payment expense included in operating expenses were as follows:

Satellite and transmission . . . . .	\$ 4,236	\$ 2,198	\$ 2,568
Programming and content . . . . .	12,148	9,643	321,774
Customer service and billing . . . . .	1,920	708	812
Sales and marketing . . . . .	13,541	15,607	19,543
Subscriber acquisition costs . . . . .	14	2,843	31,898
General and administrative . . . . .	49,354	44,317	49,928
Engineering, design and development . . . . .	6,192	3,584	11,395
Total share-based payment expense . . . . .	<u><u>\$87,405</u></u>	<u><u>\$78,900</u></u>	<u><u>\$437,918</u></u>

See accompanying Notes to the consolidated financial statements.



**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**

	As of December 31,	
	2008	2007
	(In thousands, except share and per share data)	
ASSETS		
Current assets:		
Cash and cash equivalents . . . . .	\$ 380,446	\$ 438,820
Accounts receivable, net of allowance for doubtful accounts of \$10,860 and \$4,608, respectively . . . . .	102,024	44,068
Receivables from distributors . . . . .	45,950	60,004
Inventory, net . . . . .	24,462	29,537
Prepaid expenses . . . . .	67,203	31,392
Related party current assets . . . . .	114,177	2,161
Restricted investments . . . . .	—	35,000
Other current assets . . . . .	58,744	37,875
Total current assets . . . . .	793,006	678,857
Property and equipment, net . . . . .	1,703,476	806,263
FCC licenses . . . . .	2,083,654	83,654
Restricted investments, net of current portion . . . . .	141,250	18,000
Deferred financing fees, net . . . . .	40,156	13,864
Intangible assets, net . . . . .	688,671	—
Goodwill . . . . .	1,834,856	—
Related party long-term assets, net of current portion . . . . .	124,607	3,237
Other long-term assets . . . . .	81,019	90,274
Total assets . . . . .	\$ 7,490,695	\$ 1,694,149
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable and accrued expenses . . . . .	\$ 877,594	\$ 464,943
Accrued interest . . . . .	76,463	24,772
Deferred revenue . . . . .	985,180	548,330
Current maturities of long-term debt . . . . .	399,726	35,801
Related party current liabilities . . . . .	68,373	1,148
Total current liabilities . . . . .	2,407,336	1,074,994
Long-term debt, net of current portion . . . . .	2,851,740	1,278,617
Deferred revenue, net of current portion . . . . .	247,889	110,525
Deferred credit on executory contracts . . . . .	1,037,190	—
Deferred tax liability . . . . .	894,453	12,771
Other long-term liabilities . . . . .	43,550	9,979
Total liabilities . . . . .	7,482,158	2,486,886
Commitments and contingencies (Note 16) . . . . .	—	—
Stockholders' equity (deficit):		
Series A convertible preferred stock, par value \$0.001 (liquidation preference of \$51,370 at December 31, 2008); 50,000,000 authorized at December 31, 2008, 24,808,959 shares issued and outstanding at December 31, 2008 . . . . .	25	—
Common stock, par value \$0.001; 8,000,000,000 and 2,500,000,000 shares authorized at December 31, 2008 and 2007, respectively; 3,651,765,837 and 1,471,143,570 shares issued and outstanding at December 31, 2008 and 2007, respectively . . . . .	3,652	1,471
Accumulated other comprehensive loss, net of tax . . . . .	(7,871)	—
Additional paid-in capital . . . . .	9,724,991	3,604,764
Accumulated deficit . . . . .	(9,712,260)	(4,398,972)
Total stockholders' equity (deficit) . . . . .	8,537	(792,737)
Total liabilities and stockholders' equity (deficit) . . . . .	\$ 7,490,695	\$ 1,694,149

See accompanying Notes to the consolidated financial statements.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**(DEFICIT) AND COMPREHENSIVE LOSS**

	Series A Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Deferred Compensation	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount					
(In thousands, except share and per share data)									
<b>Balance at December 31, 2005 . . .</b>	—	\$—	1,346,226,851	\$1,346	\$3,079,169	\$(26,694)	\$(2,728,853)	\$ —	\$ 324,968
Net loss . . . . .	—	—	—	—	—	—	(1,104,867)	—	(1,104,867)
Other comprehensive income . . . .	—	—	—	—	—	—	—	—	—
Total comprehensive loss . . . . .									<u>(1,104,867)</u>
Issuance of common stock to employees and employee benefit plans . . . . .	—	—	20,063,322	20	22,253	—	—	—	22,273
Issuance of common stock to third parties . . . . .	—	—	34,467,869	35	224,917	—	—	—	224,952
Compensation in connection with the issuance of stock-based awards . . . . .	—	—	—	—	100,923	—	—	—	100,923
Reversal of deferred compensation related to the adoption of Statement of Financial Accounting Standards ("SFAS") No. 123R . . . . .	—	—	—	—	(26,694)	26,694	—	—	—
Exercise of options, \$3.52 to \$6.81 per share . . . . .	—	—	19,284,495	19	26,660	—	—	—	26,679
Exercise of warrants, \$2.39 per share . . . . .	—	—	2,862,533	3	(3)	—	—	—	—
Exchange of 3½% Convertible Notes due 2008, including accrued interest . . . . .	—	—	11,730,431	12	15,989	—	—	—	16,001
<b>Balance at December 31, 2006 . . .</b>	—	\$—	1,434,635,501	\$1,435	\$3,443,214	\$ —	\$(3,833,720)	\$ —	\$ (389,071)
Net loss . . . . .	—	—	—	—	—	—	(565,252)	—	(565,252)
Other comprehensive income . . . .	—	—	—	—	—	—	—	—	—
Total comprehensive loss . . . . .									<u>(565,252)</u>
Issuance of common stock to employees and employee benefit plans . . . . .	—	—	4,279,097	4	19,242	—	—	—	19,246
Issuance of common stock to third parties . . . . .	—	—	22,058,824	22	82,919	—	—	—	82,941
Compensation in connection with the issuance of stock-based awards . . . . .	—	—	—	—	52,683	—	—	—	52,683
Exercise of options, \$2.79 to \$4.16 per share . . . . .	—	—	2,859,232	3	3,529	—	—	—	3,532
Exercise of warrants, \$1.04 to \$2.39 per share . . . . .	—	—	4,988,726	5	(5)	—	—	—	—
Exchange of 3½% Convertible Notes due 2008, including accrued interest . . . . .	—	—	2,321,737	2	3,180	—	—	—	3,182
Exchange of 2½% Convertible Notes due 2009, including accrued interest . . . . .	—	—	453	—	2	—	—	—	2

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**(DEFICIT) AND COMPREHENSIVE LOSS — (Continued)**

	Series A Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Deferred Compensation	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount					
(In thousands, except share and per share data)									
<b>Balance at December 31, 2007 . . .</b>	—	\$—	1,471,143,570	\$1,471	\$3,604,764	\$ —	\$(4,398,972)	\$ —	\$ (792,737)
Net loss . . . . .	—	—	—	—	—	—	(5,313,288)	—	(5,313,288)
Other comprehensive loss:									
Unrealized loss on available-for-sale securities . . . . .	—	—	—	—	—	—	—	(1,040)	(1,040)
Foreign currency translation adjustment . . . . .	—	—	—	—	—	—	—	(6,831)	(6,831)
Total comprehensive loss . . . . .									(5,321,159)
Common stock issued to XM Satellite Radio Holdings stockholders . . . . .	—	—	1,440,858,219	1,441	5,459,412	—	—	—	5,460,853
Restricted common stock issued to XM Satellite Radio Holdings stockholders . . . . .	—	—	29,739,201	30	66,598	—	—	—	66,628
Issuance of common stock to employees and employee benefit plans, net of forfeitures . . . . .	—	—	5,091,274	5	10,841	—	—	—	10,846
Issuance of common stock issued under share borrow agreements . . . . .	—	—	262,399,983	262	—	—	—	—	262
Series A convertible preferred stock issued to XM Satellite Radio Holdings stockholders . . . . .	24,808,959	25	—	—	47,070	—	—	—	47,095
Compensation in connection with the issuance of stock-based awards . . . . .	—	—	—	—	83,610	—	—	—	83,610
Conversion of XM Satellite Radio Holdings vested stock-based awards . . . . .	—	—	—	—	94,616	—	—	—	94,616
Conversion of XM Satellite Radio Holdings outstanding warrants . . . . .	—	—	—	—	115,784	—	—	—	115,784
Exercise of options, \$1.45 to \$3.36 per share . . . . .	—	—	117,442	—	208	—	—	—	208
Exercise of warrants, \$2.392 per share . . . . .	—	—	899,836	1	(1)	—	—	—	—
Exercise of XM Satellite Radio Holdings outstanding warrants . . . . .	—	—	17,173,644	17	(17)	—	—	—	—
Exchange of 3½% Convertible Notes due 2008, including accrued interest . . . . .	—	—	24,131,155	24	33,478	—	—	—	33,502
Exchange of 2½% Convertible Notes due 2009, including accrued interest . . . . .	—	—	400,211,513	401	208,712	—	—	—	209,113
Restricted shares withheld for taxes upon vesting . . . . .	—	—	—	—	(84)	—	—	—	(84)
<b>Balance at December 31, 2008 . . .</b>	<u>24,808,959</u>	<u>\$25</u>	<u>3,651,765,837</u>	<u>\$3,652</u>	<u>\$9,724,991</u>	<u>\$ —</u>	<u>\$(9,712,260)</u>	<u>\$(7,871)</u>	<u>\$ 8,537</u>

See accompanying Notes to the consolidated financial statements.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	For the Years Ended December 31,		
	2008	2007	2006
	(In thousands)		
Cash flows from operating activities:			
Net loss	\$(5,313,288)	\$(565,252)	\$(1,104,867)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	203,752	106,780	105,749
Impairment of goodwill	4,766,190	—	—
Non-cash interest expense, net of amortization of premium	(6,311)	4,269	3,107
Provision for doubtful accounts	21,589	9,002	9,370
Non-cash loss from redemption of debt	98,203	—	—
Amortization of deferred income related to equity method investment	(1,156)	—	—
Loss on disposal of assets	4,879	(428)	1,661
Impairment loss	—	—	10,917
Loss on investments, net	28,999	—	4,445
Share-based payment expense	87,405	78,900	437,918
Deferred income taxes	2,476	2,435	2,065
Other non-cash purchase price adjustments	(68,330)	—	—
Other	1,643	—	—
Changes in operating assets and liabilities, net of assets and liabilities acquired:			
Accounts receivable	(32,121)	(28,881)	(1,871)
Inventory	8,291	4,965	(20,246)
Receivables from distributors	14,401	(13,179)	(20,312)
Related party assets	(22,249)	(1,241)	(1,189)
Prepaid expenses and other current assets	(19,953)	11,118	(42,132)
Other long-term assets	(5,490)	13,691	(18,377)
Accounts payable and accrued expenses	(65,481)	66,169	26,366
Accrued interest	23,081	(8,920)	1,239
Deferred revenue	55,778	169,905	181,003
Related party liabilities	34,646	—	—
Other long-term liabilities	30,249	1,901	3,452
Net cash used in operating activities	<u>(152,797)</u>	<u>(148,766)</u>	<u>(421,702)</u>
Cash flows from investing activities:			
Additions to property and equipment	(130,551)	(65,264)	(92,674)
Sales of property and equipment	105	641	127
Purchases of restricted and other investments	(3,000)	(310)	(12,339)
Acquisition of acquired entity cash	819,521	—	—
Merger related costs	(23,519)	(29,444)	—
Purchase of available-for-sale securities	—	—	(123,500)
Sale of restricted and other investments	65,869	40,191	255,715
Net cash provided by (used in) investing activities	<u>728,425</u>	<u>(54,186)</u>	<u>27,329</u>
Cash flows from financing activities:			
Proceeds from exercise of warrants and stock options and from share borrow arrangement	471	4,097	25,787
Long-term borrowings, net of related costs	531,743	244,879	—
Payment of premiums on redemption of debt	(18,693)	—	—
Payments to minority interest holder	(1,479)	—	—
Repayment of long term borrowings	(1,146,044)	(625)	—
Net cash (used in) provided by financing activities	<u>(634,002)</u>	<u>248,351</u>	<u>25,787</u>
Net (decrease) increase in cash and cash equivalents	<u>(58,374)</u>	<u>45,399</u>	<u>(368,586)</u>
Cash and cash equivalents at beginning of period	<u>438,820</u>	<u>393,421</u>	<u>762,007</u>
Cash and cash equivalents at end of period	<u>\$ 380,446</u>	<u>\$ 438,820</u>	<u>\$ 393,421</u>
Supplemental Disclosure of Cash and Non-Cash Flow Information			
Cash paid during the period for:			
Interest, net of amounts capitalized	\$ 137,542	\$ 66,266	\$ 59,929
Income taxes	—	—	—
Non-cash operating activities:			
Common stock issued in satisfaction of accrued compensation	8,729	7,949	7,243
Non-cash investing and financing activities:			
Release of restriction on marketable securities	—	—	4,750
Common stock issued in exchange of 3½% Convertible Notes due 2008, including accrued interest	33,502	3,182	16,001
Common stock issued in exchange of 2½% Convertible Notes due 2009, including accrued interest	209,113	2	—
Common stock issued to third parties	—	82,941	224,952
Equity issued in the acquisition of XM	5,784,976	—	—

See accompanying Notes to the consolidated financial statements.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Dollar amounts in thousands, unless otherwise stated)**

**(1) Business**

We broadcast in the United States our music, sports, news, talk, entertainment, traffic and weather channels for a subscription fee through our proprietary satellite radio systems — the SIRIUS system and the XM system. On July 28, 2008, our wholly owned subsidiary, Vernon Merger Corporation, merged (the “Merger”) with and into XM Satellite Radio Holdings Inc. and, as a result, XM Satellite Radio Holdings Inc. is now our wholly owned subsidiary. The SIRIUS system consists of three in-orbit satellites, approximately 120 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. The XM system consists of four in-orbit satellites, over 700 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. Subscribers can also receive certain of our music and other channels over the Internet.

Our satellite radios are primarily distributed through automakers (“OEMs”), retailers and our websites. We have agreements with every major automaker to offer SIRIUS or XM satellite radios as factory or dealer-installed equipment in their vehicles. SIRIUS and XM radios are also offered to customers of rental car companies, including Hertz and Avis.

Our subscriber totals include subscribers under our regular pricing plans; discounted pricing plans; subscribers that have prepaid, including payments either made or due from automakers for prepaid subscriptions included in the sale or lease price of a new vehicle; active SIRIUS radios under our agreements with Hertz and XM radios under the agreement with Avis; subscribers to SIRIUS Internet Radio and XM Internet Radio, our Internet services; and certain subscribers to our weather, traffic, data and video services.

Our primary source of revenue is subscription fees, with most of our customers subscribing on an annual, semi-annual, quarterly or monthly basis. We offer discounts for prepaid and long-term subscriptions as well as discounts for multiple subscriptions on each platform. We also derive revenue from activation fees, the sale of advertising on select non-music channels, the direct sale of satellite radios and accessories, and other ancillary services, such as our Backseat TV, data and weather services.

In certain cases, automakers include a subscription to our radio services in the sale or lease price of vehicles. The length of these prepaid subscriptions varies, but is typically three to twelve months. In many cases, we receive subscription payments from automakers in advance of the activation of our service. We also reimburse various automakers for certain costs associated with satellite radios installed in their vehicles.

We also have an interest in the satellite radio services offered in Canada. Subscribers to the SIRIUS Canada service and the XM Canada service are not included in our subscriber count.

We have incurred losses from operations and have generated negative cash flows from operations in each of the past three years. At December 31, 2008, we had an accumulated deficit of \$9,712,260. As discussed in notes 12 and 19 to these consolidated financial statements, we have approximately \$374,720 of debt maturing through January 2010, after reflecting the changes to our debt and capital structure. These refinancing activities were necessary to reduce our 2009 debt service requirements to a level that we believe enables us to meet our obligations as they come due. Our ability to meet our debt and other obligations as they come due depends on the successful execution of our 2009 operating plan and on economic, financial and competitive factors influencing our business.

The purchase of a satellite radio subscription is discretionary and a continued weakening of the United States economy likely will negatively affect our business. Further, the sale and lease of automobiles with satellite radios is an important source of our subscribers. The significant slowdown in automobile sales in the United States also will negatively impact subscriber growth. We monitor our operations for opportunities to alter the timing of expenditures to ensure that sufficient liquidity is available to meet our obligations as they come due.

Our plan to maintain sufficient liquidity includes the potential for deferring the planned launch of satellites, deferring planned 2008 employee bonus payments or satisfying planned 2008 employee bonuses with non-cash awards, and deferring planned capital projects or other discretionary expenses. We believe that our cash and cash

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

equivalents on hand, marketable securities, available borrowings from Liberty Media, and expected cash flows from operations in 2009 will be sufficient to satisfy our financial obligations through January 2010. Our financial projections are based on assumptions, which we believe are reasonable, but contain uncertainties as noted above.

Unless otherwise indicated,

- “we,” “us,” “our,” the “company,” “the companies” and similar terms refer to Sirius XM Radio Inc. and its consolidated subsidiaries;
- “SIRIUS” refers to Sirius XM Radio Inc. and its consolidated subsidiaries, excluding XM Satellite Radio Holdings Inc. and its consolidated subsidiaries;
- “XM Holdings” refers to XM Satellite Radio Holdings Inc. and its consolidated subsidiaries, including XM Satellite Radio Inc.; and
- “XM” refers to XM Satellite Radio Inc. and its consolidated subsidiaries.

**(2) Principles of Consolidation and Basis of Presentation**

***Principles of Consolidation***

The accompanying consolidated financial statements of Sirius XM Radio Inc. and subsidiaries have been prepared in accordance with U.S. generally accepted accounting principles. We consolidate variable interest entities, as defined by Financial Accounting Standards Board (“FASB”) Interpretation (“FIN”) No. 46(R), *Consolidation of Variable Interest Entities, An Interpretation of ARB No. 51*, in which we are the primary beneficiary. All intercompany transactions have been eliminated in consolidation.

***Basis of Presentation***

In presenting consolidated financial statements, management makes estimates and assumptions that affect the amounts reported and related disclosures. Additionally, estimates were used when recording the fair values of assets acquired and liabilities assumed in the Merger. Estimates, by their nature, are based on judgment and available information. Actual results could differ from those estimates.

The results of XM Holdings’ operations have been included in the accompanying consolidated financial statements of Sirius XM Radio Inc. from the date of the Merger. Although the effective date of the Merger was July 28, 2008, due to the immateriality of the results of operations for the period between July 28 and July 31, 2008, we have accounted for the Merger as if it had occurred on July 31, 2008 with the results and balances of XM Holdings included as of July 31, 2008.

**(3) Summary of Significant Accounting Policies**

***Use of Estimates***

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported and related disclosures.

Significant estimates inherent in the preparation of the accompanying consolidated financial statements include fair valuations of XM Holdings’ assets and liabilities, revenue recognition, asset impairment, useful lives of our satellites, share-based payment expense, and valuation allowances against deferred tax assets. The financial market volatility and poor economic conditions in the U.S. have impacted and will continue to impact our business. Such conditions could have a material impact to our significant accounting estimates.



**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

***Revenue Recognition***

We derive revenue primarily from subscribers, advertising and direct sales of merchandise. Revenue from subscribers consists of subscription fees; revenue derived from our agreements with Hertz and Avis; non-refundable activation fees; and the effects of rebates. Revenue is recognized as it is realized or realizable and earned.

We recognize subscription fees as our services are provided. Prepaid subscription fees are recorded as deferred revenue and amortized to revenue ratably over the term of the applicable subscription plan.

At the time of sale, vehicle owners purchasing or leasing a vehicle with a subscription to our service typically receive between a three-month and twelve-month prepaid subscription. Prepaid subscription fees received from certain automakers are recorded as deferred revenue and amortized to revenue ratably over the service period, upon activation and sale to a customer. We reimburse automakers for certain costs associated with the satellite radio installed in the applicable vehicle at the time the vehicle is manufactured. The associated payments to the automakers are included in Subscriber acquisition costs. In the opinion of management, this is the appropriate characterization of our relationship since we are responsible for providing the service to the customers, including being obligated to the customers in the case of an interruption of service.

Activation fees are recognized ratably over the estimated term of a subscriber relationship, currently estimated to be approximately 3.5 years. The estimated term of a subscriber relationship is based on actual historical experience.

As required by Emerging Issues Task Force (“EITF”) No. 01-09, *Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor’s Products)*, an estimate of rebates that are paid by us to subscribers is recorded as a reduction to revenue in the period the subscriber activates service. For certain rebate promotions, a subscriber must remain active for a specified period of time to be considered eligible. In those instances, the estimate is recorded as a reduction to revenue over the required activation period. We estimate the effects of mail-in rebates based on actual take-rates for rebate incentives offered in prior periods, adjusted as deemed necessary based on take-rate data available at the time. In subsequent periods, estimates are adjusted when necessary. For instant rebate promotions, we record the consideration paid to the consumer as a reduction to revenue in the period the customer participates in the promotion.

We recognize revenue from the sale of advertising as the advertising is broadcast. Agency fees are calculated based on a stated percentage applied to gross billing revenue for our advertising inventory and are reported as a reduction of Advertising revenue. We pay certain third parties a percentage of Advertising revenue. Advertising revenue is recorded gross of such revenue share payments in accordance with EITF No. 99-19, *Reporting Revenue Gross as a Principal versus Net as an Agent*, as we are the primary obligor in the transaction. Advertising revenue share payments are recorded to Revenue share and royalties during the period in which the advertising is broadcast.

Equipment revenue and royalties from the sale of satellite radios, components and accessories is recognized upon shipment, net of discounts and rebates. Shipping and handling costs billed to customers are recorded as revenue. Shipping and handling costs associated with shipping goods to customers are reported as a component of Cost of equipment.

EITF No. 00-21, *Accounting for Revenue Arrangements with Multiple Deliverables*, provides guidance on how and when to recognize revenues for arrangements that may involve the delivery or performance of multiple products, services and/or rights to use assets. Revenue arrangements with multiple deliverables are required to be divided into separate units of accounting if the deliverables in the arrangement meet certain criteria. Arrangement consideration must be allocated among the separate units of accounting based on their relative fair values.

***Programming Costs***

We record the costs associated with our programming agreements in accordance with Statements of Financial Accounting Standards (“SFAS”) No. 63, *Financial Reporting by Broadcasters*. Programming costs which are for a

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

specified number of events are amortized on an event-by-event basis; programming costs which are for a specified season are amortized over the season on a straight-line basis. We allocate a portion of certain programming costs which are related to sponsorship and marketing activities to sales and marketing expenses on a straight-line basis over the term of the agreement.

***Advertising Costs***

We record the costs associated with advertising in accordance with Statement of Position (“SOP”) No. 93-7, *Reporting on Advertising Costs*. Media is expensed when aired and advertising production costs are expensed as incurred. Market development funds are fixed and variable payments to reimburse retailers for the cost of advertising and other product awareness activities. Fixed market development funds are expensed over the periods specified in the applicable agreement; variable costs are expensed at the time a subscriber is activated. During the years ended December 31, 2008, 2007 and 2006, we recorded advertising costs of \$109,253, \$107,485 and \$123,553, respectively. These costs are reflected in Sales and marketing expense in our consolidated statements of operations.

***Stock-Based Compensation***

We account for equity instruments granted to employees in accordance with SFAS No. 123 (revised 2004), *Share-Based Payment* (“SFAS No. 123R”). SFAS No. 123R requires all share-based compensation payments to be recognized in the financial statements based on fair value using an option pricing model. SFAS No. 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from initial estimates. We use the Black-Scholes-Merton option-pricing model to value stock option awards and have elected to treat awards with graded vesting as a single award.

Fair value is determined using Black-Scholes-Merton model varies based on assumptions used for the expected life, expected stock price volatility and risk-free interest rates. We estimate the fair value of awards granted using the implied volatility of actively traded options on our common stock. The expected life assumption represents the weighted-average period stock-based awards are expected to remain outstanding. These expected life assumptions are established through a review of historical exercise behavior of stock-based award grants with similar vesting periods. Where historical patterns do not exist, contractual terms are used. The risk-free interest rate represents the daily treasury yield curve rate at the grant date based on the closing market bid yields on actively traded U.S. treasury securities in the over-the-counter market for the expected term. Our assumptions may change in future periods.

Equity instruments granted to non-employees are accounted for in accordance with SFAS No. 123R, as interpreted by EITF No. 96-18, *Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. The final measurement date for the fair value of equity instruments with performance criteria is the date that each performance commitment for such equity instrument is satisfied or there is a significant disincentive for non-performance.

Stock-based awards granted to employees, non-employees and members of our board of directors generally include warrants, stock options, restricted stock and restricted stock units. The share-based payment expense recognized includes compensation cost for all stock-based awards granted to employees and members of our board of directors (i) prior to, but not vested as of January 1, 2006, based on the grant date fair value originally estimated in accordance with the provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, and (ii) subsequent to December 31, 2005, based on the grant date fair value estimated in accordance with the provisions of SFAS No. 123R.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

***Subscriber Acquisition Costs***

Subscriber acquisition costs include hardware subsidies paid to radio manufacturers, distributors and automakers, including subsidies paid to automakers who include a satellite radio and a prepaid subscription to our service in the sale or lease price of a new vehicle; subsidies paid for chip sets and certain other components used in manufacturing radios; device royalties for certain radios; commissions paid to retailers and automakers as incentives to purchase, install and activate radios; product warranty obligations; provisions for inventory allowance; and compensation costs associated with stock-based awards granted in connection with certain distribution agreements. Subscriber acquisition costs do not include advertising, loyalty payments to distributors and dealers of radios and revenue share payments to automakers and retailers of radios.

Subsidies paid to radio manufacturers and automakers are expensed upon installation, shipment, receipt of product or activation. Commissions paid to retailers and automakers are expensed upon either the sale or activation of radios. Chip sets that are shipped to radio manufacturers and held on consignment are recorded as inventory and expensed as Subscriber acquisition costs when placed into production by radio manufacturers. Costs for chip sets not held on consignment are expensed as Subscriber acquisition costs when the chip sets are installed, shipped, received, or activated by a subscriber.

We record product warranty obligations in accordance with FIN No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*, an interpretation of FASB Statements No. 5, 57, and 107 and rescission of FASB Interpretation No. 34. FIN No. 45 requires a guarantor to recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken by issuing the guarantee. We warrant that certain products sold through our retail and direct to consumer distribution channels will perform in all material respects in accordance with specifications in effect at the time of the purchase of the products by the customer. As of April 2008, SIRIUS changed its product warranty period on some of its products from twelve-months to 90 days from the purchase date for repair or replacement of components and/or products that contain defects of material or workmanship. Products manufactured prior to April 2008 contained a warranty period of 12 months from the purchase date. Customers may exchange products directly to the retailer within 30 days of purchase. We recorded a liability for costs that we expect to incur under our warranty obligations when the product is shipped from the manufacturer. Factors affecting the warranty liability include the number of units sold and historical and anticipated rates of claims and costs per claim. We periodically assess the adequacy of our warranty liability based on changes in these factors.

***Research & Development Costs***

Research and development costs are expensed as incurred and primarily include the cost of new product development, chip set design, software development and engineering. During the years ended December 31, 2008, 2007 and 2006, we recorded research and development costs of \$41,362, \$38,082 and \$46,460, respectively. These costs are reported as a component of Engineering, design and development expense in our consolidated statements of operations.

***Income Taxes***

We account for income taxes in accordance with SFAS No. 109, *Accounting for Income Taxes*, as interpreted by FIN No. 48, *Accounting for Uncertainty in Income Taxes*. Deferred income taxes are recognized for the tax consequences related to temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the amounts used for tax purposes at each year-end, based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. A valuation allowance is recognized when, based on the weight of all available evidence, if it is considered more likely than not that all, or some portion, of the deferred tax assets will not be realized. Income tax expense is the sum of current income tax plus the change in deferred tax assets and liabilities.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

FIN No. 48 requires a company to first determine whether it is more-likely-than-not (defined as a likelihood of more than fifty percent) that a tax position will be sustained based on its technical merits as of the reporting date, assuming that taxing authorities will examine the position and have full knowledge of all relevant information. A tax position that meets this more-likely-than-not threshold is then measured and recognized at the largest amount of benefit that is greater than fifty percent likely to be realized upon effective settlement with a taxing authority.

***Net (Loss) Income per Common Share***

We compute net (loss) income per common share in accordance with SFAS No. 128, *Earnings Per Share*. Basic net (loss) income per common share is calculated using the weighted average common shares outstanding during each reporting period. Diluted net (loss) income per common share adjusts the weighted average common shares outstanding for the potential dilution that could occur if common stock equivalents (convertible debt and preferred stock, warrants, stock options and restricted stock shares and units) were exercised or converted into common stock. Common stock equivalents of approximately 787,000,000, 165,000,000 and 194,000,000 for the years ended December 31, 2008, 2007 and 2006, respectively, were not included in the calculation of diluted net loss per common share as the effect would have been anti-dilutive.

***Comprehensive (Loss) Income***

We report comprehensive (loss) income in accordance with SFAS No. 130, *Reporting Comprehensive Income*, which established the standard for reporting and displaying other comprehensive (loss) income and its components within financial statements.

***Cash and Cash Equivalents***

Cash and cash equivalents consist of cash on hand, money market funds, certificates of deposit and investments with an original maturity of three months or less when purchased. Cash and cash equivalents are stated at fair market value.

***Accounts Receivable***

Accounts receivable are stated at amounts due from customers net of an allowance for doubtful accounts. We specifically reserve for customers with known disputes or collectability issues. The remaining reserve recorded in the allowance for doubtful accounts is our best estimate of the amount of probable losses in our existing accounts receivable based on our actual write-off experience. All accounts receivable balances greater than approximately 30 days past the due date are considered delinquent. Delinquent accounts are written off after approximately 30 days.

***Receivables from Distributors***

Receivables from distributors are amounts due from OEMs and others for prepaid subscriptions.

***Inventory***

Inventory consists of finished goods, refurbished goods, chip sets and other raw material components used in manufacturing radios. Inventory is stated at the lower of cost, determined on a first-in, first-out basis, or market. We record an estimated allowance for inventory that is considered slow moving and obsolete or whose carrying value is in excess of net realizable value. The provision related to products purchased for our direct to consumer distribution channel is reported as a component of Cost of equipment in our consolidated statements of operations. The remaining provision is reported as a component of Subscriber acquisition costs in our consolidated statements of operations.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Inventory, net, consists of the following:

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Raw materials . . . . .	\$ 11,648	\$ 12,594
Finished goods . . . . .	38,323	34,902
Allowance for obsolescence . . . . .	<u>(25,509)</u>	<u>(17,959)</u>
Total inventory, net . . . . .	<u>\$ 24,462</u>	<u>\$ 29,537</u>

***Investments***

*Marketable Securities* — We account for investments in marketable securities in accordance with the provisions of SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*. Marketable securities consist of certificates of deposit, auction rate certificates and investments in debt and equity securities of other entities. Our investment policy objectives are the preservation of capital, maintenance of liquidity to meet operating requirements and yield maximization. Marketable securities are classified as available-for-sale securities and carried at fair market value. Unrealized gains and losses on available-for-sale securities are included in Accumulated other comprehensive (loss) income, net of tax, as a separate component of Stockholders' equity (deficit). Realized gains and losses, dividends and interest income, including amortization of the premium or discount arising at purchase, are included in Interest and investment income. The specific-identification method is used to determine the cost of all securities and the basis by which amounts are reclassified from Accumulated other comprehensive (loss) income into earnings.

We received proceeds from the sale or maturity of marketable securities of \$5,469, \$15,031 and \$229,715 for the years ended December 31, 2008, 2007 and 2006, respectively. We recorded \$914 and \$0 of net unrealized losses on marketable securities as of December 31, 2008 and 2007, respectively.

*Restricted Investments* — We have certificates of deposit, money market funds and interest-bearing accounts which are restricted as to their withdrawal. We received proceeds from the release of restricted investments of \$60,400, \$25,160 and \$26,000 for the years ended December 31, 2008, 2007 and 2006, respectively.

*Equity Method Investments* — Investments in which we have the ability to exercise significant influence but not control are accounted for pursuant to the equity method of accounting. We recognize our proportionate share of earnings or losses of our affiliates as they occur as a component of Other (expense) income in our consolidated statements of operations. We evaluate our equity method investments for impairment whenever events, or changes in circumstances, indicate that the carrying amounts of such investments may not be recoverable. The difference between the carrying value and the estimated fair values of our equity method investees is recognized as an impairment loss when the loss is deemed to be other than temporary.

*Cost Method Investments* — Investments in equity securities that do not have readily determinable fair values and in which we do not have a controlling interest or are unable to exert significant influence are recorded at cost.

We adopted the provisions of SFAS No. 157, *Fair Value Measurements*, on January 1, 2008 as it applies to financial assets and liabilities. SFAS No. 157 establishes a fair value hierarchy for input into valuation techniques as follows: i) Level 1 input — unadjusted quoted prices in active markets for identical instrument; ii) Level 2 input — observable market data for the same or similar instrument but not Level 1; and iii) Level 3 input — unobservable inputs developed using management's assumptions about the inputs used for pricing the asset or liability. We use Level 3 inputs to fair value our investments in auction rate certificates issued by student loan trusts and the 8% convertible unsecured subordinated debentures issued by XM Canada. These investments are not material to our consolidated results of operations or financial position.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Investments are periodically reviewed for impairment and a write down is recorded whenever declines in fair value below carrying value are determined to be other than temporary. In making this determination, we consider, among other factors, the severity and duration of the decline as well as the likelihood of a recovery within a reasonable timeframe.

***Property and Equipment***

Property and equipment is stated at cost less accumulated depreciation and amortization. Equipment under capital leases is stated at the present value of minimum lease payments. Depreciation and amortization are calculated using the straight-line method over the following estimated useful lives:

Satellite system . . . . .	2-15 years
Terrestrial repeater network. . . . .	3-15 years
Broadcast studio equipment . . . . .	3-15 years
Capitalized software and hardware . . . . .	3-7 years
Satellite telemetry, tracking and control facilities . . . . .	3-17.5 years
Furniture, fixtures, equipment and other . . . . .	2-7 years
Building. . . . .	20 or 30 years
Leasehold improvements. . . . .	Lesser of useful life or remaining lease term

We operate three in-orbit satellites in our SIRIUS system and have one ground spare satellite. The three in-orbit SIRIUS satellites were launched in 2000 and the spare satellite was delivered to ground storage in 2002. The three-satellite constellation and terrestrial repeater network were placed into service in 2002. SIRIUS has an agreement with Space Systems/Loral for the design and construction of an additional two satellites. In January 2008, SIRIUS entered into an agreement with International Launch Services to secure two satellite launches on Proton rockets. This agreement with International Launch Services allows SIRIUS the flexibility to defer the second of these launch dates and to cancel either launch upon payment of a cancellation fee.

We operate four in-orbit satellites in our XM system, two of which function as in-orbit spares. The two in-orbit spare satellites were launched in 2001 while the other two satellites were launched and placed into service in 2005 and 2006, respectively. XM is constructing an additional satellite.

In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate the carrying amount may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds the estimated future cash flows, an impairment charge is recognized for the amount by which the carrying amount exceeds the fair value of the asset.

***Goodwill and Other Intangible Assets***

Goodwill represents the purchase price in excess of the net amount assigned to identifiable assets acquired and liabilities assumed in the Merger. We perform an impairment test at least annually or more frequently if indicators of impairment exist. We are required to perform a two-step impairment test of goodwill under the provisions of SFAS No. 142, *Goodwill and Other Intangible Assets*. The fair value of the entity is compared to its carrying value and if the fair value exceeds its carrying value, goodwill is not impaired. If the carrying value exceeds the fair value, the implied fair value of goodwill is compared to the carrying value of goodwill. If the implied fair value exceeds the carrying value then goodwill is not impaired; otherwise, an impairment loss will be recorded by the amount the carrying value exceeds the implied fair value.



**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Other intangible assets with indefinite lives are tested for impairment at least annually or more frequently if indicators of impairment exist under the provisions of SFAS No. 142.

Other intangible assets with finite lives are amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment under the provisions of SFAS No. 144, *Accounting for Impairment or Disposal of Long-Lived Assets*.

***Fair Value of Financial Instruments***

The fair value of a financial instrument is the amount at which the instrument could be exchanged in an orderly transaction between market participants to sell the asset or transfer the liability. As of December 31, 2008 and 2007, we have determined that the carrying amounts of cash and cash equivalents, accounts and other receivables, and accounts payable approximate fair value due to the short-term nature of these instruments.

The fair value of our long-term debt is determined by either (i) estimation of the discounted future cash flows of each instrument at rates currently offered to us for similar debt instruments of comparable maturities by our bankers, or quoted market prices at the reporting date for the traded debt securities. As of December 31, 2008 and 2007, the carrying value of long-term debt was \$3,251,466 and \$1,314,418, respectively; while the fair value approximated \$1,211,613 and \$1,309,017, respectively.

***Reclassifications***

Certain amounts in the prior period consolidated financial statements have been reclassified to conform to the current period presentation.

***Recent Accounting Pronouncements***

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*. This Statement defines fair value, establishes a framework for measuring fair value and enhances disclosures about fair value measurements. In February 2008, the FASB issued FASB Staff Position (“FSP”) 157-1, *Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13* and FSP 157-2, *Effective Date of FASB Statement No. 157*. FSP 157-1 amends SFAS No. 157 to remove certain leasing transactions from its scope. FSP 157-2, delays the effective date of SFAS No. 157 for all nonfinancial assets and liabilities, except those that are recognized or disclosed at fair value in the financial statements on at least an annual basis, until January 1, 2009 for calendar year end entities. In October 2008, the FASB issued FSP 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*, which provides a detailed example to illustrate key considerations in determining the fair value of a financial asset in an inactive market, and emphasizes the requirements to disclose significant unobservable inputs used as a basis for estimating fair value. We adopted the provisions of SFAS No. 157 on January 1, 2008, except as it applies to nonfinancial assets and liabilities as noted in FSP 157-2. Neither the partial adoption nor the issuance of FSP 157-3 had any significant impact on our consolidated results of operations or financial position. We will adopt the provisions of SFAS No. 157, as amended, on January 1, 2009 as it relates to nonfinancial assets and liabilities, and do not expect a significant impact on our consolidated results of operations or financial position as a result.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities — Including an Amendment of FASB Statement No. 115*, which permits entities to choose to measure many financial instruments and certain other items at fair value. The objective is to improve financial reporting by providing entities with the opportunity to mitigate volatility in reported earnings caused by measuring related assets and liabilities differently without having to apply complex hedge accounting provisions. This Statement is expected to expand the use of fair value measurement, which is consistent with the FASB’s long-term measurement objectives for accounting for financial instruments. We adopted the provisions of SFAS No. 159 on January 1, 2008

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

and did not elect the fair value option as of that date. The adoption had no significant impact on our consolidated results of operations or financial position.

In November 2007, the FASB issued SFAS No. 141R, *Business Combinations*, which continues to require that all business combinations be accounted for by applying the acquisition method. Under the acquisition method, the acquirer recognizes and measures the identifiable assets acquired, the liabilities assumed, and any contingent consideration and contractual contingencies, as a whole, at their face value as of the acquisition date. Under SFAS No. 141R, all transaction costs are expensed as incurred. SFAS No. 141R rescinded EITF No. 93-07, *Uncertainties Related to Income Taxes in a Purchase Business Combination*. Under SFAS No. 141R, all subsequent adjustments to uncertain tax positions assumed in a business combination that previously would have impacted goodwill are recognized in the income statement. The guidance in SFAS No. 141R is applied prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning after December 15, 2008. SFAS No. 141R does not impact the accounting for the Merger and we do not expect its adoption to have a significant impact on our consolidated results of operations or financial position.

In December 2007, the FASB ratified EITF No. 07-1, *Accounting for Collaborative Agreements*, which provides guidance on how the parties to a collaborative agreement should account for costs incurred and revenue generated on sales to third parties, how sharing payments pursuant to a collaboration agreement should be presented in the income statement and certain related disclosure requirements. This EITF is effective for the first annual or interim reporting period beginning after December 15, 2008, and should be applied retrospectively to all prior periods presented for all collaborative arrangements existing as of the effective date. We will adopt EITF No. 07-1 effective January 1, 2009. We do not expect the adoption of EITF No. 07-1 to have a significant impact on our consolidated results of operations or financial position.

In April 2008, the FASB issued FSP No. FAS 142-3, *Determination of the Useful Life of Intangible Assets*. FSP No. FAS 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, *Goodwill and Other Intangible Assets*. This FSP is effective for financial statements issued for fiscal years beginning after December 15, 2008. We will adopt FSP No. FAS 142-3 effective January 1, 2009. We do not expect the adoption of FSP No. FAS 142-3 to have a significant impact on our consolidated results of operations or financial position.

In May 2008, the FASB issued FSP No. APB 14-1, *Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)* which amends the accounting requirements for convertible debt instruments that, by their stated terms, may be settled in cash (or other assets) upon conversion, including partial cash settlement. Additional disclosures are also required for these instruments. This FSP is effective for financial statements issued for fiscal years beginning after December 15, 2008. We will adopt FSP No. APB 14-1 effective January 1, 2009. We do not expect the adoption of FSP No. APB 14-1 to have a significant impact on our consolidated results of operations or financial position.

In June 2008, the FASB ratified EITF No. 07-5, *Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock*, which provides guidance for determining whether an equity-linked financial instrument (or embedded feature) issued by an entity is indexed to the entity's stock, and therefore would qualify for the first part of the scope exception in paragraph 11(a) of SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*. The EITF prescribes a two-step approach under which the entity would evaluate the instrument's contingent exercise provisions and then the instrument's settlement provisions, for purposes of evaluating whether the instrument (or embedded feature) is indexed to the entity's stock. This EITF is effective for financial statements issued for fiscal years beginning after December 15, 2008. We will adopt EITF No. 07-5 effective January 1, 2009. We do not expect the adoption of EITF No. 07-5 to have a significant impact on our consolidated results of operations or financial position.

In November 2008, the FASB ratified EITF No. 08-6, *Equity Method Investment Accounting Considerations*, which applies to all investments accounted for under the equity method. The EITF clarifies the accounting for

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

certain transactions and impairment considerations involving these investments. This EITF is effective for financial statements issued for fiscal years beginning after December 15, 2008. We will adopt EITF No. 08-6 effective January 1, 2009. We do not expect the adoption of EITF No. 08-6 to have a significant impact on our consolidated results of operations or financial position.

**(4) Acquisition**

On July 28, 2008, Vernon Merger Corporation, a wholly owned subsidiary of SIRIUS, merged with and into XM Satellite Radio Holdings Inc. As a result, XM Holdings became our wholly-owned subsidiary.

The results of operations for XM Holdings have been included in our consolidated results of operations beginning August 1, 2008. The effective date of the Merger was July 28, 2008; however, due to the immateriality of the results of operations for the period July 28, 2008 through July 31, 2008, we have accounted for the Merger as if it had occurred on July 31, 2008, with the results and balances of XM Holdings included as of July 31, 2008. The Merger has been accounted for under the purchase method of accounting pursuant to the provisions of SFAS No. 141, *Business Combinations*. The application of purchase accounting under SFAS No. 141 resulted in the transaction being valued at \$5,836,363, based upon the average closing price of \$3.79 of our common stock on The NASDAQ Global Select Market for the two days prior to, including, and the two days subsequent to the public announcement of the Merger on February 19, 2007.

On that basis, the table below shows the value of the consideration paid in connection with the Merger:

	<u>Total</u>
Fair value of common stock issued to XM Holdings stockholders . . . . .	\$5,460,853
Fair value of preferred stock issued to XM Holdings stockholders . . . . .	47,095
Fair value of converted stock options . . . . .	94,616
Fair value of restricted stock issued to XM Holdings restricted stockholders . . . . .	66,628
Fair value of converted warrants . . . . .	115,784
Acquisition costs . . . . .	<u>51,387</u>
Total . . . . .	<u><u>\$5,836,363</u></u>

SFAS No. 141 requires that the total purchase price be allocated to the fair value of assets acquired and liabilities assumed based on their fair values at the acquisition date, with any excess recorded as goodwill. We have allocated the purchase price based on the fair values of assets acquired and liabilities assumed in connection with the Merger.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The table below summarizes the fair value of the XM Holdings assets acquired, liabilities assumed and related deferred income taxes as of the acquisition date.

	<u>July 31, 2008</u>
<b>Acquired assets:</b>	
Current assets . . . . .	\$ 1,078,148
Property and equipment . . . . .	912,638
Non-amortizable intangible assets . . . . .	2,250,000
Amortizable intangible assets . . . . .	474,460
Goodwill . . . . .	6,601,046
Other assets . . . . .	326,948
Total assets . . . . .	<u>\$11,643,240</u>
<b>Assumed liabilities:</b>	
Current liabilities . . . . .	789,001
Total debt . . . . .	2,576,512
Deferred income taxes . . . . .	847,616
Other non-current liabilities and deferred credit on executory contracts . . . . .	1,593,748
Total liabilities . . . . .	<u>\$ 5,806,877</u>
Total consideration . . . . .	<u>\$ 5,836,363</u>

During the third quarter of 2008, we recorded a preliminary estimate of goodwill in the amount of \$6,626,504, which was adjusted to \$6,601,046 during the fourth quarter of 2008 upon finalization of the fair value of acquired assets and assumed liabilities in the Merger. During the three months ended December 31, 2008, we recognized an incremental \$15,331 of impairment of goodwill as an adjustment to the \$4,750,859 goodwill impairment loss recognized in the third quarter of 2008, which was based on our preliminary purchase price allocations (see Note 5, Goodwill).

In connection with the Merger, \$2,250,000 of the purchase price was allocated to certain indefinite lived intangible assets of XM Holdings, including \$2,000,000 associated with XM Holdings' FCC license and \$250,000 associated with trademarks. During the year ended December 31, 2008, no impairment loss was recorded for intangible assets with indefinite lives.

In connection with the Merger, \$474,460 of the purchase price was allocated to certain finite-lived intangible assets of XM Holdings which are subject to straight-line amortization, except for the subscriber relationships which are amortized on an accelerated basis. Acquired finite-lived intangible assets included \$33,000 associated with a licensing agreement with a manufacturer, \$42,000 associated with a licensing agreement with XM Canada, \$380,000 associated with subscriber relationships, \$16,552 associated with proprietary software, \$2,000 associated with developed technology and \$908 associated with leasehold interests. During the year ended December 31, 2008, we recorded amortization expense of \$35,789.

In connection with the Merger, we identified \$74,473 of costs associated with reductions in staffing levels and consolidations, which was comprised of \$66,515 in severance and related benefits and \$7,958 in lease and other contract termination costs. During 2008, we paid \$38,676 in severance and related benefits and the remaining severance and related benefits are expected to be paid by the end of 2009. These costs were recognized in accordance with the EITF No. 95-3, *Recognition of Liabilities in Connection with a Purchase Business Combination*, as assumed liabilities in the business combination. As of December 31, 2008, the balance of this liability was \$35,797.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following schedule presents unaudited consolidated pro forma results of operations as if the Merger had occurred on January 1, 2007. This information does not purport to be indicative of the actual results that would have occurred if the Merger had actually been completed January 1 2007, nor is it necessarily indicative of the future operating results or the financial position of the combined company:

	<b>For the Years Ended December 31,</b>	
	<b>2008</b>	<b>2007</b>
Total revenue .....	\$ 2,374,374	\$ 1,977,844
Net loss(1) .....	(5,610,666)	(1,273,125)
Net loss per common share (basic and diluted) .....	(1.80 )	(0.44 )

(1) 2008 includes goodwill impairment charge of \$4,766,190

**(5) Goodwill**

During the third quarter of 2008, we recorded a preliminary estimate of goodwill in the amount of \$6,626,504 in connection with the Merger. Pursuant to the provisions of SFAS No. 141, we have allocated the consideration paid to the fair value of acquired assets and assumed liabilities. These allocations were preliminary at September 30, 2008 and were finalized by December 31, 2008.

SFAS No. 142 requires that we assess goodwill for impairment at least annually or more frequently if indicators of impairment exist. The price of our common stock declined significantly from February 19, 2007, the measurement date for valuation of the Merger through December 31, 2008, indicating a potential impairment. Under SFAS No. 142, the fair value of the entity (based upon market capitalization) is compared to its carrying value, and if the fair value exceeds its carrying value, then goodwill is not impaired. If the carrying value exceeds the fair value then we will compare the implied fair value of goodwill to the carrying value of goodwill. If the implied fair value exceeds the carrying value then goodwill is not impaired; otherwise, an impairment loss will be recorded by the amount the carrying value exceeds the implied fair value. Our impairment analysis indicated that the carrying value of goodwill exceeded the implied fair value of goodwill, resulting in an estimated impairment charge of \$4,750,859 in the third quarter of 2008 and an incremental goodwill impairment charge of \$15,331 in the fourth quarter of 2008 when the finalization of the purchase price allocations were completed.

The changes in the carrying value of goodwill for the year ended December 31, 2008 were as follows:

Balance at December 31, 2007 .....	\$ —
Acquisition .....	6,601,046
Impairment Loss .....	<u>(4,766,190)</u>
Balance at December 31, 2008 .....	<u><u>\$ 1,834,856</u></u>

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**(6) Intangible Assets**

Intangible assets consisted of the following:

		As of December 31, 2008			As of December 31, 2007		
	Weighted Average Useful Lives	Gross Carrying Value	Accumulated Amortization	Net Carrying Value	Gross Carrying Value	Accumulated Amortization	Net Carrying Value
Indefinite life intangible assets							
FCC licenses . . . . .	Indefinite	\$2,083,654	\$ —	\$2,083,654	\$83,654	\$—	\$83,654
Trademarks . . . . .	Indefinite	250,000	—	250,000	—	—	—
Definite life intangible assets							
Subscriber relationships . .	9 years	\$ 380,000	\$(29,226)	\$ 350,774	\$ —	\$—	\$ —
Proprietary software . . . .	6 years	16,552	(2,285)	14,267	—	—	—
Developed technology . . .	10 years	2,000	(83)	1,917	—	—	—
Licensing agreements . . .	9.1 years	75,000	(4,090)	70,910	—	—	—
Leasehold interest . . . . .	7.4 years	<u>908</u>	<u>(105)</u>	<u>803</u>	<u>—</u>	<u>—</u>	<u>—</u>
Total intangible assets . . . . .		<u>\$2,808,114</u>	<u>\$(35,789)</u>	<u>\$2,772,325</u>	<u>\$83,654</u>	<u>\$—</u>	<u>\$83,654</u>

***Indefinite Life Intangibles Assets***

We have identified our FCC licenses and the XM trademark as indefinite life intangibles after considering the expected use of the assets, the regulatory and economic environment within which they are being used, and the effects of obsolescence on their use.

We hold FCC licenses to operate a satellite digital audio radio service and provide ancillary services. SIRIUS' FCC license for most of its satellites expires in 2010 and the licenses for one of its new satellites expires eight years after SIRIUS certifies the satellite is operating; XM Holdings' FCC licenses for its satellites expire on various dates from 2009 to 2014. Prior to the expirations, we will be required to apply for a renewal of our FCC licenses. We currently have one such application on file for a license expiring in March 2009. As long as we act within the requirements and constraints of the regulatory authorities, the renewal and extension of our licenses is reasonably certain at minimal cost. The FCC licenses authorize us to use the broadcast spectrum, which is a renewable, reusable resource that does not deplete or exhaust over time.

In connection with the Merger, \$250,000 of the purchase price was allocated to the XM trademarks. As of December 31, 2008, there are no legal, regulatory or contractual limitations associated with the XM trademarks.

We evaluate our indefinite life intangible assets for impairment on an annual basis in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*. During the year ended December 31, 2008, no impairment loss was recorded for intangible assets with indefinite lives.

***Finite-Lived Intangibles Assets***

Finite-lived intangibles assets consist primarily of subscriber relationships of \$380,000 that were acquired as a result of the Merger. Subscriber relationships are amortized on an accelerated basis over 9 years, which reflects the estimated pattern in which the economic benefits will be consumed. Other definite life intangibles include certain licensing agreements of \$75,000, which will be amortized over a weighted average of 9.1 years on a straight-line basis.



**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Amortization expense for the years ended December 31, 2008 was \$35,789. Expected amortization expense for each of the fiscal years through December 31, 2013 and for periods thereafter is as follows:

<u>Year Ending December 31,</u>	<u>Amount</u>
2009 .....	\$ 76,765
2010 .....	66,143
2011 .....	59,021
2012 .....	53,467
2013 .....	47,097
Thereafter .....	<u>136,178</u>
Total intangibles, net. ....	<u>\$438,671</u>

**(7) Subscriber Revenue**

Subscriber revenue consists of subscription fees, revenue derived from our agreement with Hertz, non-refundable activation fees and the effects of rebates. Revenues received from automakers for prepaid subscriptions included in the sale or lease price of a new vehicle are also included in subscriber revenue over the service period upon activation and sale to the customer.

Subscriber revenue consists of the following:

	<u>For the Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
Subscription fees .....	\$1,524,758	\$853,832	\$572,386
Activation fees .....	23,025	20,878	15,612
Effect of rebates .....	<u>(3,832)</u>	<u>(19,777)</u>	<u>(12,594)</u>
Total subscriber revenue. ....	<u>\$1,543,951</u>	<u>\$854,933</u>	<u>\$575,404</u>

**(8) Interest Costs**

We capitalize a portion of the interest on funds borrowed to finance the construction costs of our satellites. The following is a summary of our interest costs:

	<u>For the Years Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
Interest costs charged to expense .....	\$144,833	\$70,328	\$64,032
Interest costs capitalized .....	<u>20,872</u>	<u>8,914</u>	<u>4,205</u>
Total interest costs incurred .....	<u>\$165,705</u>	<u>\$79,242</u>	<u>\$68,237</u>

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**(9) Property and Equipment**

Property and equipment, net, consists of the following:

	<b>As of December 31,</b>	
	<b>2008</b>	<b>2007</b>
Satellite system . . . . .	\$1,414,625	\$ 933,433
Terrestrial repeater network . . . . .	109,228	68,658
Leasehold improvements . . . . .	42,878	35,178
Broadcast studio equipment . . . . .	49,186	39,373
Capitalized software and hardware . . . . .	89,246	37,295
Satellite telemetry, tracking and control facilities . . . . .	56,217	17,838
Furniture, fixtures, equipment and other . . . . .	101,304	69,687
Land . . . . .	38,411	311
Building . . . . .	56,392	2,432
Construction in progress . . . . .	<u>474,716</u>	<u>174,565</u>
Total property and equipment . . . . .	2,432,203	1,378,770
Accumulated depreciation and amortization . . . . .	<u>(728,727)</u>	<u>(572,507)</u>
Property and equipment, net . . . . .	<u>\$1,703,476</u>	<u>\$ 806,263</u>

	<b>As of December 31,</b>	
	<b>2008</b>	<b>2007</b>
Satellite system . . . . .	\$449,129	\$155,736
Terrestrial repeater network . . . . .	19,070	11,885
Leasehold improvements . . . . .	—	347
Other . . . . .	<u>6,517</u>	<u>6,597</u>
Construction in progress . . . . .	<u>\$474,716</u>	<u>\$174,565</u>

Depreciation and amortization expense on property and equipment was \$167,963, \$106,780 and \$105,749 for the years ended December 31, 2008, 2007 and 2006.

***Satellites***

Our orbiting SIRIUS satellites were successfully launched in 2000. Our spare SIRIUS satellite was delivered to ground storage in 2002. Our three-satellite constellation and terrestrial repeater network were placed into service in 2002.

We entered into an agreement with Space Systems/Loral for the design and construction of our fifth and sixth SIRIUS satellites. In January 2008, we entered into an agreement with International Launch Services to secure two additional satellite launches on Proton rockets. This agreement provides us the flexibility to defer the second of these launch dates and to cancel either launch upon payment of a cancellation fee.

XM owns four orbiting satellites; two of which, XM-3 and XM-4, currently transmit the XM signal and two of which, XM-1 and XM-2, serve as in-orbit spares. The XM satellites were launched in March 2001, May 2001, February 2005 and October 2006.

XM also expects to replace the XM satellite constellation to meet its business needs. Space Systems/Loral is constructing a fifth satellite, XM-5, for use in the XM system. XM has also entered into an agreement with Sea Launch to secure a launch for XM-5.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**(10) Related Party Transactions**

In 2005, SIRIUS entered into a license and services agreement with SIRIUS Canada. Pursuant to such agreement, SIRIUS is reimbursed for certain costs incurred to provide SIRIUS Canada service, including certain costs incurred for the production and distribution of radios, as well as information technology support costs. In consideration for the rights granted pursuant to this license and services agreement, SIRIUS Canada is obligated to pay SIRIUS a royalty based on a percentage of its annual gross revenues. SIRIUS' investment in SIRIUS Canada is primarily non-voting shares which carry an 8% cumulative dividend.

Total costs that have been or will be reimbursed by SIRIUS Canada for the years ended December 31, 2008, 2007 and 2006 were \$14,973, \$7,712 and \$9,227, respectively. We recorded \$1,309, \$1,159 and \$945 in royalty income for the years ended December 31, 2008, 2007 and 2006, respectively. Such royalty income recognized as a component of Other revenue in our consolidated statements of operations. We also recorded dividend income of \$199, \$422, and \$700 for the years ended December 31, 2008, 2007, and 2006, respectively, which was included in Interest and investment income in our accompanying consolidated statements of operations.

The amount due from SIRIUS Canada at December 31, 2008 was \$1,814 and is included in the Company's investment and advances to SIRIUS Canada which was fully utilized to absorb a portion of the Company's proportionate share of losses generated by SIRIUS Canada. The amounts payable to SIRIUS Canada at December 31, 2008 and 2007 to fund its remaining capital requirements, were \$1,160 and \$1,148, respectively, and are included in Related party current liabilities in our consolidated balance sheets.

In November 2005, XM entered into agreements to provide XM Canada with the right to offer XM satellite radio service in Canada. The agreements have an initial term of ten years and XM Canada has the unilateral option to extend the term of the agreements for an additional five years at no additional cost beyond the current financial arrangements. XM Canada has expressed its intent to exercise this option at the end of the initial term of the agreements. XM has the right to receive a 15% royalty for all subscriber fees earned by XM Canada each month for its basic service and a nominal activation fee for each gross activation of an XM Canada subscriber on XM's system. XM Canada is obligated to pay XM a total of \$71,800 for the rights to broadcast and market National Hockey League ("NHL") games for the 10-year term of XM's contract with the NHL. In accordance with EITF No. 99-19, *Reporting Revenue Gross as a Principal versus Net as an Agent*, we recognize these payments on a gross basis as a principal. The estimated fair value of deferred revenue due from XM Canada as of the Merger date was approximately \$34,000, and will be amortized on a straight-line basis over the remaining expected term of the agreements. The remaining carrying value of Deferred revenue related to XM Canada was \$32,844 as of December 31, 2008.

XM has extended a Cdn\$45,000 standby credit facility to XM Canada which can be utilized to purchase terrestrial repeaters or finance the payment of subscription fees. The facility matures on December 31, 2012 and bears interest at a rate of 17.75% per annum. XM has the right to convert unpaid principal amounts into Class A subordinate voting shares of XM Canada at the price of Cdn\$16.00 per share. As of December 31, 2008, XM Canada had drawn \$8,311 on this facility in lieu of payment of subscription fees. These amounts are included in Related party long-term assets in our consolidated balance sheet.

In connection with the deferred income related to XM Canada, we recorded amortization of \$1,156 for the year ended December 31, 2008. The royalty fees XM earns related to subscriber and activation fees are reported as a component of Other revenue in our consolidated statements of operations. We recorded royalty fees of \$97 for the year ended December 31, 2008. XM Canada pays XM a licensing fee and reimburses XM for advertising, both of which are reported as a component of Other revenue in our consolidated statements of operations. We recognized licensing fee revenue of \$2,500 and advertising reimbursements of \$366 for the year ended December 31, 2008. The amount due from XM Canada at December 31, 2008 was \$5,594, and is included in Related party current assets in our consolidated balance sheets.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

XM has agreements with General Motors (“GM”) and American Honda Motor Co., Inc. (“American Honda”), both of which hold shares of our stock and have one representative each on our board of directors. GM and American Honda install XM radios and promote the XM radio service, and XM will make available use of bandwidth. Subscription revenues received from GM and American Honda for these programs are reported as a component of subscriber revenue.

We recorded total revenue from GM, primarily consisting of subscriber revenue, of \$16,803 for the year ended December 31, 2008. We recorded total revenue from American Honda, primarily consisting of subscriber revenue, of \$7,504 for the year ended December 31, 2008.

We rely on GM and American Honda for marketing and we are responsible for certain revenue share payments to these related parties. We recognized Sales and marketing expense with GM of \$47,090 for the year ended December 31, 2008. We recognized Sales and marketing expense with American Honda of \$4,248 for the year ended December 31, 2008. We recognized Revenue share and royalties expense with GM of \$36,305 and American Honda of \$2,051 for the year ended December 31, 2008.

As of December 31, 2008, we recorded, within Related party current assets, \$10,132 and \$94,444 of amounts due from GM and prepaid expenses with GM, respectively. As of December 31, 2008, we recorded, within Related party long-term assets, \$116,296 of prepaid expenses with GM. As of December 31, 2008, we recorded \$2,194 within Related party current assets for amounts due from American Honda.

As of December 31, 2008, we recorded \$63,023 within Related party current liabilities for amounts due to GM. As of December 31, 2008, we recorded \$4,190 within Related party current liabilities for amounts due to American Honda.

**(11) Investments**

Investments consist of the following:

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Marketable securities . . . . .	\$ 10,525	\$ 469
Restricted investments . . . . .	141,250	53,000
Embedded derivative accounted for separately from the host contract . . . . .	2	—
Equity method investments . . . . .	<u>8,873</u>	<u>—</u>
Total investments . . . . .	<u>\$160,650</u>	<u>\$53,469</u>

***SIRIUS Canada***

We have a 49.9% economic interest in SIRIUS Canada. Our investment in SIRIUS Canada is recorded using the equity method since we have a significant influence, but less than a controlling voting interest in SIRIUS Canada. Under this method, our investment in SIRIUS Canada, originally recorded at cost, is adjusted quarterly to recognize our proportionate share of net earnings or losses as they occur, rather than at the time dividends or other distributions are received, limited to the extent of our investment in, advances to and commitments to fund SIRIUS Canada. Our share of net earnings or losses of SIRIUS Canada is recorded to Equity in net loss of equity method investment in our consolidated statements of operations. We recorded \$4,745, \$0 and \$4,445 for the years ended December 31, 2008, 2007 and 2006, respectively, for our share of SIRIUS Canada’s net loss. As of December 31, 2008, the carrying value of our equity method investment was \$0.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

***XM Canada***

We have a 23.33% economic interest in XM Canada. The amount of the Merger purchase price allocated to the fair value of our investment in XM Canada was \$41,188. Our investment in XM Canada is recorded using the equity method (on a one-month lag) since we have significant influence, but less than a controlling voting interest in XM Canada. Under this method, our investment in XM Canada is adjusted quarterly to recognize our share of net earnings or losses as they occur, rather than at the time dividends or other distributions are received, limited to the extent of our investment in, advances to, and commitments to fund XM Canada. Our share of net earnings or losses of XM Canada is recorded to Loss on investments in our consolidated statements of operations. We recorded \$9,309 for the year ended December 31, 2008 for our share of XM Canada's net loss. In the fourth quarter of 2008, we reduced the carrying value of our investment in XM Canada due to decreases in fair value that were considered to be other- than- temporary and recorded an impairment charge of \$16,453. Under SFAS No. 157, we used a Level 1 input, consisting of the quoted market price of shares of XM Canada, to value our investment in XM Canada. In addition, XM Holdings holds an investment in Cdn\$4,000 face value of 8% convertible unsecured subordinated debentures issued by XM Canada for which the embedded conversion feature is required under SFAS No. 133 to be bifurcated from the host contract. The host contract is accounted for as an available-for-sale security at fair value with changes in fair value recorded to Accumulated other comprehensive loss, net of tax. The embedded conversion feature is accounted for as a derivative at fair value with changes in fair value recorded in earnings as Interest and investment income. As of December 31, 2008, the carrying value of our equity method investment was \$8,873, while the carrying value of the host contract and embedded derivative related to our investment in the debentures was \$2,540 and \$2, respectively.

***Auction Rate Certificates***

Auction rate certificates are long-term securities structured to reset their coupon rates by means of an auction. We account for our investment in auction rate certificates as available-for-sale securities. As of December 31, 2008, the carrying value of these securities was \$7,985.

***Restricted Investments***

Restricted investments relate to deposits placed into escrow for the benefit of third parties pursuant to programming agreements and reimbursement obligations under letters of credit issued for the benefit of lessors of office space. As of December 31, 2008 and 2007, the carrying value of our short-term restricted investments was \$0 and \$35,000, respectively, and primarily included certificates of deposit placed in escrow for the benefit of a third party pursuant to a programming agreement. As of December 31, 2008 and 2007, the carrying value of our long-term restricted investments was \$141,250 and \$18,000, respectively, and primarily included certificates of deposit and money market funds deposited in escrow for the benefit of third parties pursuant to programming agreements and certificates of deposit placed in escrow to secure reimbursement obligations under letters of credit issued for the benefit of lessors of office space. Included in the December 31, 2008 balances are restricted investments in the form of a \$120,000 escrow deposit for the benefit of Major League Baseball, which we acquired in connection with the Merger.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**(12) Debt**

Our debt consists of the following:

	Conversion Price (Per share)	Long Term Debt	
		December 31,	
		2008	2007
<b>SIRIUS Debt</b>			
Senior Secured Term Loan due 2012 . . . . .	N/A	\$ 246,875	\$ 249,375
9 <sup>5</sup> / <sub>8</sub> % Senior Notes due 2013 . . . . .	N/A	500,000	500,000
3 <sup>1</sup> / <sub>4</sub> % Convertible Notes due 2011 . . . . .	\$ 5.30	230,000	230,000
2 <sup>1</sup> / <sub>2</sub> % Convertible Notes due 2009 . . . . .	4.41	189,586	299,998
3 <sup>1</sup> / <sub>2</sub> % Convertible Notes due 2008 . . . . .	1.38	—	33,301
8 <sup>3</sup> / <sub>4</sub> % Convertible Subordinated Notes due 2009 . . . . .	28.46	1,744	1,744
<b>XM and XM Holdings Debt</b>			
Senior Secured Term Loan due 2009 . . . . .	N/A	100,000	N/A
7% Exchangeable Senior Subordinated Notes due 2014 . .	1.88	550,000	N/A
9.75% Senior Notes due 2014 . . . . .	N/A	5,260	N/A
13% Senior Notes due 2013 . . . . .	N/A	778,500	N/A
Less: discount . . . . .	N/A	(74,986)	N/A
10% Convertible Senior Notes due 2009 . . . . .	10.87	400,000	N/A
Less: discount . . . . .		(16,449)	
10% Senior Secured Discount Convertible Notes due 2009 . . . . .	0.69	33,249	N/A
Add: premium . . . . .	34,321	N/A	
Senior Secured Revolving Credit Facility due 2009 . . . .	N/A	250,000	N/A
Add: premium . . . . .		151	
<b>Other debt:</b>			
Capital leases . . . . .	N/A	23,215	N/A
Total debt . . . . .		3,251,466	1,314,418
Less: current maturities . . . . .		399,726	35,801
Total long-term . . . . .		<u>\$2,851,740</u>	<u>\$1,278,617</u>

Subsequent to December 31, 2008, we have entered into agreements that have had a significant impact on our debt and capital structure as more fully described in Note 19.

***SIRIUS Debt***

***Senior Secured Term Loan***

In June 2007, SIRIUS entered into a term credit agreement with a syndicate of financial institutions. The term credit agreement provides for a Senior Secured Term Loan (the “SIRIUS Term Loan”) of \$250,000, which has been fully drawn. Interest under the SIRIUS Term Loan is based, at our option, on (i) adjusted LIBOR plus 2.25% or (ii) the higher of (a) the prime rate and (b) the Federal Funds Effective Rate plus ½ of 1.00%, plus 1.25%. As of December 31, 2008, the interest rate was 5.44%. LIBOR borrowings may be made for interest periods, at our option, of one, two, three or six months (or, if agreed by all of the lenders, nine or twelve months). The SIRIUS Term Loan amortizes in equal quarterly installments of 0.25% of the initial aggregate principal amount for the first four and a



**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

half years, with the balance of the loan thereafter being repaid in four equal quarterly installments. The SIRIUS Term Loan matures on December 20, 2012.

The SIRIUS Term Loan is guaranteed by our wholly owned subsidiaries, including Satellite CD Radio, Inc. (the “Guarantor”), and is secured by a lien on substantially all of SIRIUS’ and the Guarantor’s assets, including SIRIUS’ three in-orbit satellites and one ground spare satellite and the shares of the Guarantors.

The SIRIUS Term Loan contains customary affirmative covenants and event of default provisions. The negative covenants contained in the SIRIUS Term Loan are substantially similar to those contained in the indenture governing the 9<sup>5</sup>/<sub>8</sub>% Senior Notes due 2013.

*9<sup>5</sup>/<sub>8</sub>% Senior Notes due 2013*

In August 2005, SIRIUS issued \$500,000 in aggregate principal amount of 9<sup>5</sup>/<sub>8</sub>% Senior Notes due 2013 (the “9<sup>5</sup>/<sub>8</sub>% Notes”) resulting in net proceeds, after debt issuance costs, of \$493,005. The 9<sup>5</sup>/<sub>8</sub>% Notes mature on August 1, 2013 and interest is payable semi-annually on February 1 and August 1 of each year. The obligations under the 9<sup>5</sup>/<sub>8</sub>% Notes are not secured by any of our assets.

*3<sup>1</sup>/<sub>4</sub>% Convertible Notes due 2011*

In October 2004, SIRIUS issued \$230,000 in aggregate principal amount of 3<sup>1</sup>/<sub>4</sub>% Convertible Notes due 2011 (the “3<sup>1</sup>/<sub>4</sub>% Notes”) resulting in net proceeds, after debt issuance costs, of \$224,813. The 3<sup>1</sup>/<sub>4</sub>% Notes are convertible, at the option of the holder, into shares of our common stock at any time at a conversion rate of 188.6792 shares of common stock for each \$1,000 principal amount, or \$5.30 per share of common stock, subject to certain adjustments. The 3<sup>1</sup>/<sub>4</sub>% Notes mature on October 15, 2011 and interest is payable semi-annually on April 15 and October 15 of each year. The obligations under the 3<sup>1</sup>/<sub>4</sub>% Notes are not secured by any of our assets.

*2<sup>1</sup>/<sub>2</sub>% Convertible Notes due 2009*

In February 2004, SIRIUS issued \$250,000 in aggregate principal amount of 2<sup>1</sup>/<sub>2</sub>% Convertible Notes due 2009 (the “2<sup>1</sup>/<sub>2</sub>% Notes”) resulting in net proceeds, after debt issuance costs, of \$244,625. In March 2004, SIRIUS issued an additional \$50,000 in aggregate principal amount of the 2<sup>1</sup>/<sub>2</sub>% Notes pursuant to an option granted in connection with the initial offering of the notes, resulting in net proceeds of \$48,975. As of December 31, 2008, \$110,414 principal balance of the 2<sup>1</sup>/<sub>2</sub>% Notes were converted into shares of our common stock. During 2009, but prior to the maturity date, an additional \$18,000 principal balance of the 2<sup>1</sup>/<sub>2</sub>% Notes were converted into shares of our common stock (see Note 19, Subsequent Events). The remaining principal balance of \$171,586 of the 2<sup>1</sup>/<sub>2</sub>% Notes matured on February 15, 2009, and were paid in cash at maturity.

*3<sup>1</sup>/<sub>2</sub>% Convertible Notes due 2008*

In May 2003, SIRIUS issued \$201,250 in aggregate principal amount of 3<sup>1</sup>/<sub>2</sub>% Convertible Notes due 2008 resulting in net proceeds, after debt issuance costs, of \$194,224. These notes matured on June 1, 2008 and were repaid on such date.

*8<sup>3</sup>/<sub>4</sub>% Convertible Subordinated Notes due 2009*

In 1999, SIRIUS issued 8<sup>3</sup>/<sub>4</sub>% Convertible Subordinated Notes due 2009 (the “8 3/4% Notes”). The 8<sup>3</sup>/<sub>4</sub>% Notes are convertible, at the option of the holder, into shares of our common stock at any time at a conversion rate of 35.134 shares of common stock for each \$1,000 principal amount, or \$28.4625 per share of common stock, subject to certain adjustments. The remaining balance of the 8<sup>3</sup>/<sub>4</sub>% Notes matures on September 29, 2009 and interest is payable semi-annually on March 29 and September 29 of each year. The obligations under the 8<sup>3</sup>/<sub>4</sub>% Notes are not secured by any of our assets.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Space Systems/Loral Credit Agreement*

In July 2007, SIRIUS amended and restated its existing Credit Agreement with Space Systems/Loral (the “Loral Credit Agreement”). Under the Loral Credit Agreement, Space Systems/Loral agreed to make loans to SIRIUS in an aggregate principal amount of up to \$100,000 to finance the purchase of its fifth and sixth satellites. After April 6, 2009, Loral’s commitment will be limited to 80% of amounts due with respect to the construction of our sixth satellite. Loans made under the Loral Credit Agreement are secured by SIRIUS’ rights under the Satellite Purchase Agreement with Space Systems/Loral, including its rights to these satellites. The loans are also entitled to the benefits of a subsidiary guarantee from Satellite CD Radio, Inc., the subsidiary that holds SIRIUS’ FCC license, and any future material subsidiary that may be formed by SIRIUS. The maturity date of the loans is the earliest to occur of (i) June 10, 2010, (ii) 90 days after the sixth satellite becomes available for shipment and (iii) 30 days prior to the scheduled launch of the sixth satellite. The Loral Credit Agreement contains certain drawing conditions, including the requirement that SIRIUS have a market capitalization of at least \$1 billion. As a result of these borrowing conditions, we currently cannot borrow under this facility and in the future we may be limited in our ability to borrow under this facility. Any loans made under the Loral Credit Agreement generally will bear interest at a variable rate equal to 3-month LIBOR plus 4.75%. The daily unused balance bears interest at a rate per annum equal to 0.50%, payable quarterly on the last day of each March, June, September and December. The Loral Credit Agreement permits SIRIUS to prepay all or a portion of the loans outstanding without penalty. SIRIUS has not borrowed under the Loral Credit Agreement.

*XM and XM Holdings Debt*

On the date of the Merger, XM and XM Holdings had debt in the aggregate amount of \$2,600,000. Following the Merger, XM repurchased notes with aggregate principal amounts outstanding of \$795,000 in accordance with “change of control put” terms of such indebtedness. In addition, XM satisfied its \$309,400 transponder repurchase obligation associated with one of its satellites in accordance with the terms of a sale-leaseback transaction. In order to effect these repurchases, XM issued approximately \$1,328,500 in aggregate principal amount of new debt securities.

*Senior Secured Term Loan*

XM is party to a credit agreement dated May 2008 relating to a \$100,000 Senior Secured Term Loan (the “XM Term Loan”) with UBS AG. The XM Term Loan matures on May 5, 2009. Interest is payable quarterly. At December 31, 2008, the interest rate was 5.5625%. The interest rate is 225 basis points over the 9-month LIBOR. The XM Term Loan is secured on a *pari passu* basis with the XM Revolving Credit Facility (as defined below) by substantially all of XM’s assets.

*7% Exchangeable Senior Subordinated Notes due 2014*

In August 2008, XM issued \$550,000 aggregate principal amount of 7% Exchangeable Senior Subordinated Notes due 2014 (the “Exchangeable Notes”). The Exchangeable Notes are senior subordinated obligations of XM and rank junior in right of payment to its existing and future senior debt and equally in right of payment with its existing and future senior subordinated debt. XM Holdings, XM Equipment Leasing LLC and XM Radio Inc. have guaranteed the Exchangeable Notes on a senior subordinated basis. The Exchangeable Notes are not guaranteed by SIRIUS or Satellite CD Radio, Inc. Interest is payable semi-annually in arrears on June 1 and December 1 of each year at a rate of 7% per annum. The Exchangeable Notes mature on December 1, 2014. The Exchangeable Notes are exchangeable at any time at the option of the holder into shares of our common stock at an initial exchange rate of 533.3333 shares of common stock per \$1,000 principal amount of Exchangeable Notes, which is equivalent to an approximate exchange price of \$1.875 per share of common stock.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*9.75% Senior Notes due 2014*

XM has outstanding \$5,260 aggregate principal amount of 9.75% Senior Notes due 2014 (the “9.75% Notes”). Interest on the 9.75% Notes is payable semi-annually on May 1 and November 1 at a rate of 9.75% per annum. The 9.75% Notes are unsecured and mature on May 1, 2014. XM, at its option, may redeem the 9.75% Notes at declining redemption prices at any time on or after May 1, 2010, subject to certain restrictions. Prior to May 1, 2010, XM may redeem the 9.75% Notes, in whole or in part, at a price equal to 100% of the principal amount thereof, plus a make-whole premium and accrued and unpaid interest to the date of redemption.

*13% Senior Notes due 2013*

In July 2008, XM Escrow LLC (“Escrow LLC”), a Delaware limited liability company and wholly-owned subsidiary of XM Holdings, issued \$778,500 aggregate principal amount of 13% Senior Notes due 2013 (the “13% Notes”). Interest is payable semi-annually in arrears on February 1 and August 1 of each year at a rate of 13% per annum. The 13% Notes were issued for \$700,105, resulting in an original issuance discount of \$78,395. The 13% Notes are unsecured and mature in 2013. Escrow LLC merged with and into XM. Upon this merger, the 13% Notes became obligations of XM and became guaranteed by XM Holdings, XM Equipment Leasing LLC and XM Radio Inc. The 13% Notes are not guaranteed by SIRIUS.

*10% Convertible Senior Notes due 2009*

XM Holdings has issued \$400,000 aggregate principal amount of 10% Convertible Senior Notes due 2009 (the “10% Convertible Notes”). Interest is payable semi-annually at a rate of 10% per annum. The 10% Convertible Notes mature on December 1, 2009. The 10% Convertible Notes may be converted by the holder, at its option, into shares of our common stock at a conversion rate of 92.0 shares of our common stock per \$1,000 principal amount, which is equivalent to a conversion price of \$10.87 per share of common stock (subject to adjustment in certain events). As a result of the fair valuation at acquisition date, we recognized an initial discount of \$23,700.

*10% Senior Secured Discount Convertible Notes due 2009*

XM Holdings and XM, as co-obligors, have outstanding \$33,249 aggregate principal amount of 10% Senior Secured Discount Convertible Notes due 2009 (the “10% Discount Convertible Notes”). Interest is payable semi-annually at a rate of 10% per annum. The 10% Discount Convertible Notes mature on December 31, 2009. At any time, a holder of the notes may convert all or part of the accreted value of the notes at a conversion price of \$0.69 per share. The 10% Discount Convertible Notes rank equally in right of payment with all of XM Holdings’ and XM’s other existing and future senior indebtedness, and are senior in right of payment to all of XM Holdings’ and XM’s existing and future subordinated indebtedness. As a result of the fair valuation at the acquisition date, we recognized an initial premium of \$57,550.

*Senior Secured Revolving Credit Facility*

XM is party to a \$250,000 Senior Secured Revolving Credit Facility (the “XM Revolving Credit Facility”), which has been fully drawn. The XM Revolving Credit Facility matures on May 5, 2009. Borrowings under the XM Revolving Credit Facility bear interest at a rate of LIBOR plus 150 to 225 basis points or an alternate base rate, to be the higher of the JPMorgan Chase prime rate and the Federal Funds rate plus 50 basis points, in each case plus 50 to 125 basis points. For \$187,500 of the drawn amount, the interest rate at December 31, 2008 was 3.1875%; and for \$62,500 of the drawn amount, the interest rate at December 31, 2008 was 3.9375%. The XM Revolving Credit Facility is secured by substantially all the assets of XM, other than certain specified property.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Covenants and Restrictions*

The 9 $\frac{5}{8}$ % Notes, Loral Credit Agreement, SIRIUS Term Loan, XM Term Loan, 13% Notes and XM Revolving Credit Facility require compliance with certain covenants that restrict our ability to, among other things, (i) incur additional indebtedness, (ii) incur liens, (iii) pay dividends or make certain other restricted payments, investments or acquisitions, (iv) enter into certain transactions with affiliates, (v) merge or consolidate with another person, (vi) sell, assign, lease or otherwise dispose of all or substantially all of our assets, and (vii) make voluntary prepayments of certain debt, in each case subject to exceptions as provided in the applicable indenture or credit agreement. SIRIUS operates XM Holdings as an unrestricted subsidiary for purposes of compliance with the covenants contained in its debt instruments. The XM Term Loan and the XM Revolving Credit Facility also require XM to maintain a level of cash and cash equivalents of at least \$75,000. If we fail to comply with these covenants, the 9 $\frac{5}{8}$ % Notes, SIRIUS Term Loan, XM Term Loan, 13% Notes, the Revolving Credit Facility and any loans outstanding under the Loral Credit Agreement, the SIRIUS Term Loan and the XM Term Loan could become immediately payable and the Loral Credit Agreement could be terminated.

At December 31, 2008, we were in compliance with all such covenants.

**(13) Stockholders' Equity**

*Common Stock, par value \$0.001 per share*

At our annual meeting of stockholders held in December 2008, we received approval from our stockholders to increase the amount of shares of common stock authorized under our certificate of incorporation from 4,500,000,000 to 8,000,000,000. We are authorized to issue up to 8,000,000,000 and 2,500,000,000 shares of common stock as of December 31, 2008 and December 31, 2007, respectively. There were 3,651,765,837 and 1,471,143,570 shares of common stock issued and outstanding as of December 31, 2008 and 2007, respectively.

As of December 31, 2008, approximately 858,934,000 shares of common stock were reserved for issuance in connection with outstanding convertible debt, preferred stock, warrants, incentive stock plans and common stock to be granted to third parties upon satisfaction of performance targets. During the year ended December 31, 2008, employees exercised 117,442 stock options at exercise prices ranging from \$1.45 to \$3.36 per share, resulting in proceeds to us of \$208.

In January 2007, Howard Stern and his agent were granted an aggregate of 22,059,000 shares of our common stock as a result of certain performance targets that were satisfied on December 31, 2006. We recognized expense associated with these shares of \$82,941 during the year ended December 31, 2006.

In January 2006, Howard Stern and his agent were granted an aggregate of 34,375,000 shares of our common stock as a result of certain performance targets that were satisfied in January 2006. We recognized expense associated with these shares of \$224,813 during the year ended December 31, 2006.

In January 2004, SIRIUS signed a seven-year agreement with the National Football League® (“NFL”). Upon execution of this agreement, SIRIUS delivered to the NFL 15,173,070 shares of common stock valued at \$40,967. These shares of common stock are subject to transfer restrictions which lapse over time. We recognized expense associated with these shares of \$5,852 during each of the years ended December 31, 2008, 2007 and 2006. Of the remaining \$13,272 in common stock value, \$5,852 and \$7,420 are included in Other current assets and Other long-term assets, respectively, in the consolidated balance sheet as of December 31, 2008.

*Convertible Preferred Stock, par value \$0.001 per share*

We are authorized to issue up to 50,000,000 shares of undesignated preferred stock as of December 31, 2008. There were 24,808,959 and zero shares of Series A convertible preferred stock issued and outstanding as of December 31, 2008 and 2007, respectively. The liquidation preference on the preferred stock issued and outstanding as of December 31, 2008 was \$51,370.

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The shares of Series A convertible preferred stock are convertible into common stock on a one-for-one basis at the option of the holder and receive dividends, if declared, ratably with our common stock.

***Warrants***

We have issued warrants to purchase shares of common stock in connection with distribution and programming agreements, satellite purchase agreements and certain debt issuances. As of December 31, 2008, 54,667 warrants to acquire 87,170,000 shares of common stock with an average exercise price of \$4.05 per share were outstanding. These warrants vest over time or upon the achievement of milestones and expire at various times through June 2014. For the years ended December 31, 2008, 2007 and 2006, we recognized an expense of \$1,865, \$10,707 and \$50,297, respectively.

	Average Exercise Price	Expiration Date	Number of Warrants Outstanding as of December 31,	
			2008	2007
NFL .....	\$ 2.50	March 2008 — March 2010	16,718	16,718
Penske Companies .....	2.39	July 2009	2,921	6,270
DaimlerChrysler AG .....	1.04	May 2012	16,500	16,500
Radio Shack .....	5.00	December 2010	6,000	8,000
Ford .....	3.00	October 2012	4,000	4,000
Warrants associated with XM Holdings Debt .....	0.66	December 2009	44	N/A
Warrants associated with XM Holdings Debt .....	8.77	March 2010	325	N/A
Space Systems/Loral .....	7.05	December 2011	1,840	N/A
Other distributors and programming providers .....	3.00	June 2014	1,788	2,788
Other .....	20.32	May 2009 — April 2011	<u>4,531</u>	<u>4,533</u>
Total .....	\$ 4.05		<u>54,667</u>	<u>58,809</u>

In June 2004, we issued DaimlerChrysler AG warrants to purchase up to 21,500,000 shares of our common stock at an exercise price of \$1.04 per share. These warrants have vested and are exercisable. In connection with Daimler AG's sale of Chrysler LLC, Daimler transferred warrants to purchase up to 5,000,000 shares of our common stock to Chrysler. In 2007, Chrysler LLC exercised these warrants, and we issued 3,551,532 shares of our common stock in a cashless transaction and cancelled 5,000,000 warrants.

In February 2004, we announced an agreement with RadioShack Corporation ("RadioShack") to distribute, market and sell SIRIUS radios. In connection with this agreement, we issued RadioShack warrants to purchase up to 10,000,000 shares of our common stock. These warrants have an exercise price of \$5.00 per share and vest and become exercisable if RadioShack achieves activation targets during the five-year term of the agreement. Since RadioShack did not meet performance objectives in 2007 and 2008, no shares were issued.

In January 2004, we signed an agreement with Penske Motor Group, Inc., Penske Automotive Group, Inc., Penske Truck Leasing Co. L.P. and Penske Corporation (collectively, the "Penske Companies"). In connection with this agreement, we issued the Penske Companies warrants to purchase up to 38,000,000 shares of our common stock at an exercise price of \$2.392 per share. The warrants vest over time and upon achievement of certain milestones by the Penske Companies. During the years ended December 31, 2008 and 2007, Penske Companies exercised 3,358,325 and 4,434,300, respectively, vested warrants in a series of cashless exercises. In connection with these



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transactions, we issued 889,836 and 1,437,194 shares of our common stock for the years ended December 31, 2008 and 2007, respectively.

In January 2004, we issued the NFL warrants to purchase 50,000,000 shares of our common stock at an exercise price of \$2.50 per share.

During the year ended December 31, 2004, we issued warrants to purchase 9,425,000 shares of our common stock at exercise prices of \$3.00 to \$3.21 per share to other third parties as part of distribution and programming arrangements. These warrants vest over time and upon achievement of certain milestones. During the years ended December 31, 2007 and 2006, 15,000 and 30,000 of these warrants to purchase shares of our common stock, respectively, were issued to consultants and are included in our stock option activity.

***Share Lending Agreements***

To facilitate the offering of the Exchangeable Notes, we entered into share lending agreements with Morgan Stanley Capital Services Inc. (“MS”) and UBS AG London Branch (“UBS”) under which we loaned MS and UBS an aggregate of approximately 263,000,000 shares of our common stock in exchange for a fee of \$.001 per share. The obligations of MS to us under its share lending agreement are guaranteed by its parent company, Morgan Stanley.

Under each share lending agreement, the share loan will terminate in whole or in part, as the case may be, and the relevant borrowed shares must be returned to us upon the earliest of the following: (i) the share borrower terminates all or a portion of the loan between it and us, (ii) we notify the share borrower that some of the Exchangeable Notes as to which borrowed shares relate have been exchanged, repaid or repurchased or are otherwise no longer outstanding, (iii) the maturity date of the Exchangeable Notes, December 1, 2014, (iv) the date as of which the entire principal amount of the Exchangeable Notes ceases to be outstanding as a result of exchange, repayment, repurchase or otherwise or (v) the termination of the share lending agreement by the share borrower or by us upon default by the other party, including but not limited to the bankruptcy of us or the share borrower or, in the case of the MS share lending agreement, the guarantor. A share borrower may delay the return of borrowed shares for up to 30 business days (or under certain circumstances, up to 60 business days) if such share borrower is legally prevented from returning the borrowed shares to us, in which case the share borrower may, under certain circumstances, choose to pay us the value of the borrowed shares in cash instead of returning the borrowed shares. Once borrowed shares are returned to us, they may not be re-borrowed under the share lending agreements.

The shares we loaned to the share borrowers are issued and outstanding for corporate law purposes, and holders of borrowed shares (other than the share borrowers) have the same rights under those shares as holders of any of our other outstanding common shares. Under GAAP as currently in effect, however, we believe the borrowed shares are not considered outstanding for the purpose of computing and reporting our net loss per common share. This accounting method is subject to change if the Financial Accounting Standards Board or the Emerging Issues Task Force adopts rules or issues guidance on the treatment of this type of share loan that requires an accounting method that is different from the method we are currently utilizing. The accounting method may also change if, due to a change in the credit conditions of either MS or UBS, or of Morgan Stanley, as guarantor, or otherwise, there is an increased likelihood that the borrowed shares, or the equivalent value of those shares, will not be returned to us as required under the share lending agreements. If we are required in the future to treat the borrowed shares as outstanding for purposes of computing earnings/loss per share, our earnings per share or loss per share, as the case may be, would be reduced.

**(14) Benefit Plans**

We maintain four share-based benefits plans. We satisfy awards and options granted under these plans through the issuance of new shares. During the years ended December 31, 2008, 2007 and 2006, we recognized share-based payment expense of \$87,405, \$78,900 and \$437,918, respectively. Compensation expense was recorded in our

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
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consolidated statements of operations related to these plans. We did not realize any income tax benefits from share-based benefits plans during the years ended December 31, 2008, 2007 and 2006, as a result of a full valuation allowance that is maintained for substantially all net deferred tax assets.

***2003 Long-Term Stock Incentive Plan***

SIRIUS maintains the Amended and Restated Sirius Satellite Radio 2003 Long-Term Stock Incentive Plan (the “2003 Plan”). Employees, consultants and members of our board of directors are eligible to receive awards under the 2003 Plan. The 2003 Plan provides for the grant of stock options, restricted stock, restricted stock units and other stock-based awards that the compensation committee of our board of directors may deem appropriate. Vesting and other terms of stock-based awards are set forth in the agreements with the individuals receiving the awards. Stock-based awards granted under the 2003 Plan are generally subject to a vesting requirement. Stock-based awards generally expire ten years from the date of grant. Each restricted stock unit entitles the holder to receive one share of common stock upon vesting. As of December 31, 2008, approximately 96,557,000 shares of common stock were available for future grant under the 2003 Plan.

***2007 Stock Incentive Plan***

XM Holdings maintains a 2007 Stock Incentive Plan (the “2007 Plan”) under which officers, other employees and other key individuals of XM Holdings may be granted various types of equity awards, including restricted stock, stock units, stock options, stock appreciation rights, dividend equivalent rights and other stock awards. Stock option awards under the 2007 Plan generally vest ratably over three years based on continuous service, while restricted stock generally vests ratably over one or three years based on continuous service. Stock option awards are granted with an exercise price equal to the market price of our common stock at the date of grant and expire no later than ten years from the date of grant. Grants of equity awards other than stock options or stock appreciation rights reduce the number of shares available for future grant by 1.5 times the number of shares granted under such equity awards. In connection with the Merger, the shares available for future grant under the 2007 Plan were adjusted using a conversion factor of 4.6 SIRIUS shares for each XM Holdings share. Since the Merger, there have been no grants of awards from the 2007 Plan. As of December 31, 2008, there were 62,102,063 shares available under the 2007 Plan for future grant.

***1998 Shares Award Plan***

XM Holdings maintained a 1998 Shares Award Plan (the “1998 Plan”) under which employees, consultants and non-employee directors of XM Holdings were granted stock options and restricted stock awards. Stock option awards and restricted stock awards under the 1998 Plan generally vest ratably over three years based on continuous service. Stock option awards are generally granted with an exercise price equal to the market price of our common stock at the date of grant and expire no later than ten years from the date of grant. The 1998 Plan terminated in June 2008 and shares are no longer available for future grant.

***XM Talent Option Plan***

XM Holdings maintains a Talent Option Plan (the “Talent Plan”) under which non-employee programming consultants to XM Holdings may be granted stock options awards. Stock option awards under the Talent Plan generally vest ratably over three years based on continuous service. Stock option awards are generally granted with an exercise price equal to the market price of our common stock at the date of grant and expire no later than ten years from the date of grant. In connection with the Merger, the shares available for future grant under the Talent Plan were adjusted using a conversion factor of 4.6 SIRIUS shares for each XM Holdings share. Since the Merger, there have been no grants of awards from the Talent Plan. As of December 31, 2008, there were 1,564,000 options available under the Talent Plan for future grant.



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***Merger***

In connection with the Merger, all outstanding XM Holdings' options and restricted stock were converted into the right to receive 4.6 shares of our common stock for each share issuable upon exercise or vesting of such XM Holdings option or share of restricted stock. The conversion rate was also applied to the original grant date exercise price. There was no acceleration of vesting solely as a result of the exchange and the original expiration dates of the options and restricted stock remain in effect. The fair value of these options was estimated using the Black-Scholes-Merton option pricing model.

The following table summarizes the weighted-average assumptions used to compute reported share-based payment expense to employees and members of our board of directors for the periods set forth below:

	For the Years Ended December 31,		
	2008	2007	2006
Risk-free interest rate . . . . .	2.3%	4.8%	4.2%
Expected life of options — years . . . . .	4.89	4.45	4.45
Expected stock price volatility . . . . .	80%	60%	60%
Expected dividend yield . . . . .	\$ —	\$ —	\$ —

The following table summarizes the range of assumptions used to compute reported share-based payment expense to third parties, other than non-employee members of our board of directors, for the periods set forth below:

	For the Years Ended December 31,		
	2008	2007	2006
Risk-free interest rate . . . . .	0.37-3.34%	3.1-5.0%	4.3-5.2%
Expected life of options — years . . . . .	1.25-4.08	2.25-6.33	1.67-10.00
Expected stock price volatility . . . . .	80%	60%	60%
Expected dividend yield . . . . .	\$ —	\$ —	\$ —

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The following table summarizes stock option activity under our share-based payment plans for the year ended December 31, 2008 (shares in thousands):

	<u>Shares</u>	<u>Weighted-Average Exercise Price</u>	<u>Weighted-Average Remaining Contractual Term (Years)</u>	<u>Aggregate Intrinsic Value</u>
Outstanding, January 1, 2006 . . . . .	87,024	\$4.61		
Granted . . . . .	5,254	\$5.69		
Exercised . . . . .	(19,284)	\$1.38		
Forfeited, cancelled or expired . . . . .	<u>(1,201)</u>	\$4.58		
Outstanding, December 31, 2006 . . . . .	71,793	\$5.56		
Granted . . . . .	12,715	\$3.55		
Exercised . . . . .	(2,859)	\$1.43		
Forfeited, cancelled or expired . . . . .	<u>(2,049)</u>	\$3.97		
Outstanding, December 31, 2007 . . . . .	79,600	\$5.38		
Options exchanged for outstanding XM Holdings options . . . . .	67,711	\$4.09		
Granted . . . . .	24,358	\$2.12		
Exercised . . . . .	(117)	\$1.74		
Forfeited, cancelled or expired . . . . .	<u>(6,116)</u>	\$4.09		
Outstanding, December 31, 2008 . . . . .	165,436	\$4.42	5.94	\$—
Exercisable, December 31, 2008. . . . .	121,742	\$4.91	5.07	\$—

The weighted average grant date fair value of options granted during the years ended December 31, 2008, 2007 and 2006 was \$1.27, \$1.88 and \$3.11, respectively. The total intrinsic value of stock options exercised during the years ended December 31, 2008, 2007 and 2006 was \$127, \$5,286 and \$51,847, respectively.

We recognized share-based payment expense associated with stock options of \$49,148, \$41,431 and \$49,083 for the years ended December 31, 2008, 2007 and 2006.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
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The following table summarizes the non-vested restricted stock and restricted stock unit activity under our share-based payment plans for the year ended December 31, 2008 (shares in thousands):

	<u>Shares</u>	<u>Weighted-Average Grant Date Fair Value</u>
Nonvested, January 1, 2006 . . . . .	21,977	\$2.36
Granted . . . . .	1,503	\$5.57
Vested . . . . .	(19,294)	\$2.11
Forfeited . . . . .	<u>(100)</u>	\$7.04
Nonvested, December 31, 2006 . . . . .	4,086	\$4.64
Granted . . . . .	2,188	\$3.58
Vested . . . . .	(2,575)	\$5.12
Forfeited . . . . .	<u>(76)</u>	\$1.96
Nonvested, December 31, 2007 . . . . .	3,623	\$3.70
Shares exchanged for non-vested XM Holdings shares . . . . .	33,339	\$2.93
Granted . . . . .	3,208	\$2.87
Vested . . . . .	(18,135)	\$3.06
Forfeited . . . . .	<u>(2,104)</u>	\$2.90
Nonvested, December 31, 2008 . . . . .	<u>19,931</u>	\$2.84

The weighted average grant date fair value of restricted stock units granted during the years ended December 31, 2008, 2007 and 2006 was \$2.87, \$3.58 and \$5.57, respectively. The total intrinsic value of restricted stock units that vested during the years ended December 31, 2008, 2007 and 2006 was \$21,451, \$8,668 and \$97,846, respectively.

We recognized share-based payment expense associated with restricted stock units and shares of restricted stock of \$15,650, \$10,623 and \$16,127 for the years ended December 31, 2008, 2007 and 2006.

For the year ended December 31, 2008, we recognized share-based payment expense of \$6,163 for restricted stock units granted for services performed in 2008. For the year ended December 31, 2007, we recognized share-based payment expense of \$3,859 for restricted stock units granted for services performed in 2007 or upon the satisfaction of 2007 performance targets.

Total unrecognized compensation costs related to unvested share-based payment awards granted to employees and members of our board of directors at December 31, 2008 and 2007, net of estimated forfeitures, was \$90,310 and \$80,635, respectively. The weighted-average period over which the compensation expense for these awards is expected to be recognized is three years as of December 31, 2008.

**401(k) Savings Plans**

We sponsor the Sirius Satellite Radio 401(k) Savings Plan (the “Sirius Plan”) and the XM Satellite Radio 401(k) Savings Plan (the “XM Plan”) for eligible employees. The Sirius Plan allows eligible employees to voluntarily contribute from 1% to 50% of their pre-tax salary subject to certain defined limits, while the XM Plan allows eligible employees to defer the maximum percentage of their compensation allowable under law on a pre-tax basis through contributions to the savings plan. Under the Sirius Plan, SIRIUS matches 50% of an employee’s voluntary contributions, up to 6% of an employee’s pre-tax salary, in the form of shares of common stock. Matching contributions under the Sirius Plan vest at a rate of 33⅓% for each year of employment and are fully vested after three years of employment. Under the XM Plan, XM Holdings matches 50% of an employee’s voluntary

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contributions, up to 6% of an employee's pre-tax salary, in cash. Matching contributions under the XM Plan vest immediately. Expense resulting from the matching contribution to the plans was \$2,735, \$1,551 and \$1,246 for the years ended December 31, 2008, 2007 and 2006, respectively.

SIRIUS may also elect to contribute to the profit sharing portion of the Sirius Plan based upon the total compensation of eligible participants. These additional contributions, referred to as profit-sharing contributions, are determined by the compensation committee of our board of directors. SIRIUS employees are only eligible to receive profit-sharing contributions during any year in which they are employed on the last day of the year. Profit-sharing contribution expense was \$6,610, \$4,877 and \$4,251 for the years ended December 31, 2008, 2007 and 2006.

**(15) Income Taxes**

Our income tax expense consisted of the following:

	<b>For the Years Ended December 31,</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Current taxes:			
Federal . . . . .	\$ —	\$ —	\$ —
State . . . . .	<u>—</u>	<u>478</u>	<u>—</u>
Total current taxes . . . . .	<u>—</u>	<u>478</u>	<u>—</u>
Deferred taxes:			
Federal . . . . .	2,674	1,949	2,169
State . . . . .	<u>(198)</u>	<u>8</u>	<u>(104)</u>
Total deferred taxes . . . . .	<u>2,476</u>	<u>1,957</u>	<u>2,065</u>
Total income tax expense . . . . .	<u><u>\$2,476</u></u>	<u><u>\$2,435</u></u>	<u><u>\$2,065</u></u>

The following table indicates the significant elements contributing to the difference between the federal tax benefit at the statutory rate and at our effective rate:

	<b>For the Years Ended December 31,</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Federal tax benefit, at statutory rate . . . . .	\$(1,858,784)	\$(196,986)	\$(385,981)
State income tax benefit, net of federal benefit . . . . .	(185,879)	(22,385)	(52,650)
Change in state tax rates . . . . .	17,307	25,355	45,916
Change in taxes resulting from permanent differences, net. . . . .	1,930,650	(2,707)	(37,633)
Other . . . . .	(477)	261	(974)
Change in valuation allowance . . . . .	<u>99,659</u>	<u>198,897</u>	<u>433,387</u>
Income tax expense . . . . .	<u><u>\$ 2,476</u></u>	<u><u>\$ 2,435</u></u>	<u><u>\$ 2,065</u></u>

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The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities are presented below:

	<u>December 31,</u>	
	<u>2008</u>	<u>2007</u>
Deferred tax assets:		
Net operating loss carryforwards . . . . .	\$ 2,608,038	\$ 1,367,744
GM payments and liabilities . . . . .	506,106	—
Deferred revenue . . . . .	240,849	18,717
Severance accrual . . . . .	17,237	—
Accrued bonus . . . . .	24,537	5,753
Expensed costs capitalized for tax . . . . .	75,998	—
Loan financing costs . . . . .	27,890	—
Investments . . . . .	63,786	—
Stock based compensation . . . . .	138,840	126,679
Other . . . . .	<u>100,205</u>	<u>64,637</u>
Total deferred tax assets . . . . .	3,803,486	1,583,530
Deferred tax liabilities:		
Depreciation of property and equipment . . . . .	(158,012)	(157,438)
FCC license . . . . .	(766,935)	(12,771)
Other Intangible assets . . . . .	<u>(265,138)</u>	<u>—</u>
Net deferred tax liabilities . . . . .	(1,190,085)	(170,209)
Net deferred tax assets before valuation allowance . . . . .	2,613,401	1,413,321
Valuation allowance . . . . .	<u>(3,476,583)</u>	<u>(1,426,092)</u>
Net deferred tax liability . . . . .	<u>\$ (863,182)</u>	<u>\$ (12,771)</u>

The difference in the net deferred tax liability of \$863,182 and \$12,771 at December 31, 2008 and 2007, respectively, is primarily a result of the deferred tax liability recorded as part of the purchase price accounting for the value assigned to the FCC license and other intangible assets with indeterminable lives. The other variance is the result of the difference in accounting for our FCC licenses, which are amortized over 15 years for tax purposes but not amortized for book purposes. This net deferred tax liability cannot be offset against our deferred tax assets under U.S. generally accepted accounting principles since it relates to indefinite-lived assets and are not anticipated to reverse in the same period.

At December 31, 2008, we had net operating loss (“NOL”) carryforwards of approximately \$6,800,000 for federal and state income tax purposes available to offset future taxable income. These NOL carryforwards expire on various dates beginning in 2023. We have had several ownership changes under Section 382 of the Internal Revenue Code, which limit our ability to utilize tax deductions.

As a result of the Merger, both SIRIUS and XM had a Section 382 ownership change. The ownership change does not limit our ability to utilize future tax deductions and so no adjustments were made to gross deferred tax assets as a result of the Merger.

Furthermore, future changes in our ownership may limit our ability to utilize our deferred tax assets. Realization of our deferred tax assets is dependent upon future earnings; accordingly, a full valuation allowance was recorded against the assets.

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We adopted the provisions of FIN No. 48 on January 1, 2007. FIN No. 48 prescribes a recognition threshold and measurement attributes for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return, as well as criteria on derecognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition. The cumulative effect of applying this interpretation did not result in any adjustment to retained earnings as of January 1, 2007. We had no change in our liability for unrecognized tax benefits during 2008. We do not expect any material changes to our FIN 48 positions in the next 12 months.

**(16) Commitments and Contingencies**

The following table summarizes our expected contractual cash commitments as of December 31, 2008:

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>Thereafter</u>	<u>Total</u>
Long-term debt obligations . . . . .	\$ 986,791	\$ 13,129	\$235,143	\$239,402	\$1,278,500	\$555,463	\$3,308,428
Cash interest payments . . . .	264,029	210,179	209,147	196,281	147,244	35,505	1,062,385
Satellite and transmission . .	125,372	145,486	80,159	7,672	7,926	33,112	399,727
Programming and content . .	308,545	279,798	133,279	123,237	32,483	14,350	891,692
Marketing and distribution . .	66,882	36,578	24,285	14,533	3,000	4,500	149,778
Satellite performance incentive payments . . . . .	4,096	4,384	4,695	5,030	5,392	42,831	66,428
Operating lease obligations . . . . .	41,513	37,055	22,352	18,341	14,878	15,373	149,512
Other . . . . .	<u>16,269</u>	<u>4,906</u>	<u>1,514</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>22,689</u>
Total . . . . .	<u>\$1,813,497</u>	<u>\$731,515</u>	<u>\$710,574</u>	<u>\$604,496</u>	<u>\$1,489,423</u>	<u>\$701,134</u>	<u>\$6,050,639</u>

*Long-term debt obligations.* Long-term debt obligations include principal payments on outstanding debt. Subsequent to December 31, 2008, we have entered into agreements that have had a significant impact on our debt and capital structure as more fully described in Note 19, of the 2009 commitments \$18,000 has been exchanged to common stock, the maturity of \$175,000 has been extended to 2010 and the maturity of \$247,485 has been extended to 2011.

*Cash interest payments.* Cash interest payments include interest due on outstanding debt through maturity.

*Satellite and Transmission.* We have entered into agreements with third parties to operate and maintain the off-site satellite telemetry, tracking and control facilities and certain components of our terrestrial repeater networks. We have also entered into various agreements to design and construct satellites for use in our systems and to launch those satellites. SIRIUS has entered into an agreement with Space Systems/Loral to design and construct a fifth and sixth satellite. SIRIUS plans to launch one satellite on a Proton rocket under an existing contract with International Launch Services. In January 2008, SIRIUS entered into an agreement with International Launch Services to secure two additional satellite launches on Proton rockets. This agreement provides SIRIUS with the flexibility to defer the second launch date if it chooses, and the ability to cancel either of these launches upon payment of a cancellation fee.

XM Holdings has also entered into an agreement with Space Systems/Loral to construct its fifth satellite, XM-5. In August 2007, XM's agreement with Space Systems/Loral was amended to defer payments on the remaining construction costs until the earlier of post-launch or January 2010.

Boeing Satellite Systems International, Inc., the manufacturer of XM's four in-orbit satellites, may be entitled to future in-orbit performance payments with respect to two of XM's four satellites. As of December 31, 2008, we have accrued \$28,365 related to contingent in-orbit performance payments for XM-3 and XM-4 based on expected



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operating performance over their fifteen year design life. Boeing may also be entitled to an additional \$10,000 if XM-4 continues to operate above baseline specifications during the five years beyond the satellite's fifteen year design life.

*Programming and Content.* We have entered into various programming agreements. Under the terms of these agreements, we are obligated to provide payments to other entities that may include fixed payments, advertising commitments and revenue sharing arrangements.

*Marketing and Distribution.* We have entered into various marketing, sponsorship and distribution agreements to promote our brand and are obligated to make payments to sponsors, retailers, automakers and radio manufacturers under these agreements. Certain programming and content agreements also require us to purchase advertising on properties owned or controlled by the licensors. We also reimburse automakers for certain engineering and development costs associated with the incorporation of satellite radios into vehicles they manufacture. In addition, in the event certain new products are not shipped by a distributor to its customers within 90 days of the distributor's receipt of goods, we have agreed to purchase and take title to the product.

*Operating lease obligations.* We have entered into cancelable and non-cancelable operating leases for office space, equipment and terrestrial repeaters. These leases provide for minimum lease payments, additional operating expense charges, leasehold improvements, and rent escalations that have initial terms ranging from one to fifteen years, and certain leases that have options to renew. The effect of the rent holidays and rent concessions are recognized on a straight-line basis over the lease term. Total rent expense recognized in connection with leases for the years ended December 31, 2008, 2007 and 2006 was \$40,378, \$16,941 and \$15,984, respectively.

*Other.* We have entered into various agreements with third parties for general operating purposes. In addition to the minimum contractual cash commitments described above, we have entered into agreements with automakers, radio manufacturers, distributors and others that include per-radio, per-subscriber, per-show and other variable cost arrangements. These future costs are dependent upon many factors, including subscriber growth, and are difficult to anticipate; however, these costs may be substantial. We may enter into additional programming, distribution, marketing and other agreements that contain similar provisions.

We are required under the terms of certain agreements to provide letters of credit and deposit monies in escrow, which place restrictions on cash and cash equivalents. As of December 31, 2008 and 2007, \$141,250 and \$53,000, respectively, was classified as Restricted investments as a result of obligations under these letters of credit and escrow deposits.

We have not entered into any other material off-balance sheet arrangements or transactions.

***Legal Proceedings***

*FCC Merger Order.* On July 25, 2008, the FCC adopted an order approving the Merger. The order became effective immediately upon adoption. This order was published in the Federal Register on September 8, 2008. On September 4, 2008, Mt. Wilson FM Broadcasters, Inc. filed a Petition for Reconsideration of the FCC's merger order. This Petition for Reconsideration remains pending.

*Appellate Review of FCC Merger and Consent Decree Orders.* Two different parties, U.S. Electronics and Michael Hartleib, sought appellate review of the FCC's decision regarding the Merger. Each party also challenged the FCC's decision to enter into the consent decrees resolving the investigations by the FCC's Enforcement Bureau regarding certain non-compliant terrestrial repeaters and FM modulators contained in certain satellite radios. These matters were both filed in the United States Court of Appeals for the D.C. Circuit, and have been consolidated by the court. Subsequent to filing its initial request for appellate review, U.S. Electronics moved to both amend its original filing and submit an additional notice of appeal in order to comply with the statutory requirements for review of agency decisions. The FCC moved to dismiss both the Hartleib and the U.S. Electronics requests for review on the grounds that neither party has standing to challenge the merger order or the consent decrees, and further argued that

## SIRIUS XM RADIO INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

the agency's decision to enter into a consent decree is not reviewable by the court in these circumstances. Separately, the court issued a show cause order on its own motion that requires U.S. Electronics to demonstrate why its additional notice of appeal should not be dismissed as untimely. In January 2009, the court dismissed the appeals of both U.S. Electronics and Michael Hartleib.

*Copyright Royalty Board Proceeding.* In January 2008, the Copyright Royalty Board, or CRB, of the Library of Congress issued its decision regarding the royalty rate payable by XM and SIRIUS under the statutory license covering the performance of sound recordings over their satellite digital audio radio services for the six-year period starting January 1, 2007 and ending December 31, 2012. Under the terms of the CRB's decision, we paid a royalty of 6.0% of gross revenues, subject to certain exclusions, for 2007 and 2008, we will pay 6.5% for 2009, 7.0% for 2010, 7.5% for 2011 and 8.0% for 2012. SoundExchange has appealed the decision of the CRB to the United States Court of Appeals for the District of Columbia Circuit. Final briefs in this matter were submitted to the United States Court of Appeals for the District of Columbia Circuit in February 2009 and oral argument is scheduled for March 2009.

*U.S. Electronics Arbitration.* In May 2006, U.S. Electronics Inc., a former licensed distributor and manufacturer of SIRIUS radios, commenced an arbitration proceeding against SIRIUS. U.S. Electronics alleged that SIRIUS breached its contract; failed to pay monies owed under the contract; tortiously interfered with U.S. Electronics' relationships with retailers and manufacturers; and otherwise acted in bad faith. U.S. Electronics sought up to \$133 million in damages. In August 2008, following a 20-day arbitration hearing, a panel of three arbitrators unanimously issued a 149-page Final Award dismissing with prejudice all of U.S. Electronics' claims, including its claims for lost profits. U.S. Electronics has filed suit in the United States District Court for the Southern District of New York seeking to vacate the decision of the arbitrators.

*Atlantic Recording Corporation, BMG Music, Capital Records, Inc., Elektra Entertainment Group Inc., Interscope Records, Motown Record Company, L.P., Sony BMG Music Entertainment, UMG Recordings, Inc., Virgin Records, Inc. and Warner Bros. Records Inc. v. XM Satellite Radio Inc.* In May 2006, the plaintiffs filed this action in the United States District Court for the Southern District of New York. The complaint seeks monetary damages and equitable relief, and alleges that XM radios that include advanced recording functionality infringe upon plaintiffs' copyrighted sound recordings. XM filed a motion to dismiss this matter, and that motion was denied in January 2007. XM has resolved the lawsuit with respect to Universal Music Group, Warner Music Group, Sony BMG Music Entertainment and EMI Group, and each of these parties has withdrawn as a party to the lawsuit and this lawsuit has been dismissed with respect to such parties.

Music publishing companies and certain other record companies also have filed lawsuits, purportedly on a class basis, with similar allegations. We believe these allegations are without merit and that our products comply with applicable copyright law, including the Audio Home Recording Act. We intend to vigorously defend this matter. There can be no assurance regarding the ultimate outcome of these matters, or the significance, if any, to our business, consolidated results of operations or financial position.

*Matthew Enderlin v. XM Satellite Radio Holdings Inc. and XM Satellite Radio Inc.* In January 2006, the plaintiff filed this action in the United States District Court for the Eastern District of Arkansas on behalf of a purported nationwide class of all XM subscribers. The complaint alleges that XM engaged in a deceptive trade practices under Arkansas and other state laws by representing that its music channels are commercial-free. The court stayed the litigation and directed the parties to arbitration. XM instituted arbitration with the American Arbitration Association pursuant to the compulsory arbitration clause in its customer service agreement. The plaintiff has filed a counterclaim in the arbitration on behalf of the class that he seeks to represent. We believe this matter is without merit and intend to vigorously defend the ongoing arbitration. There can be no assurance regarding the ultimate outcome of this matter, or the significance, if any, to our business, consolidated results of operations or financial position.

*Other Matters.* In the ordinary course of business, we are a defendant in various lawsuits and arbitration proceedings, including actions filed by former employees, parties to contracts or leases and owners of patents,

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

trademarks, copyrights or other intellectual property. None of these actions are, in our opinion, likely to have a material adverse effect on our cash flows, financial position or results of operations.

**(17) Quarterly Financial Data — Unaudited**

Our quarterly results of operations are summarized below:

	<b>For the Three Months Ended</b>			
	<b>March 31</b>	<b>June 30</b>	<b>September 30</b>	<b>December 31</b>
2008:(1)				
Total revenue . . . . .	\$ 270,350	\$ 283,017	\$ 488,443	\$ 622,182
Cost of services . . . . .	(146,344)	(141,933)	(272,360)	(302,810)
Loss from operations . . . . .	(88,625)	(68,049)	(4,826,977)	(53,098)
Net loss . . . . .	(104,118)	(83,899)	(4,879,427)	(245,844)
Net loss per common share — basic and diluted(2) . . . . .	\$ (0.07)	\$ (0.06)	\$ (1.93)	\$ (0.08)
2007:				
Total revenue . . . . .	\$ 204,037	\$ 226,427	\$ 241,786	\$ 249,816
Cost of services . . . . .	(123,429)	(120,493)	(126,547)	(169,846)
Loss from operations . . . . .	(135,045)	(122,600)	(105,691)	(149,754)
Net loss . . . . .	(144,745)	(134,147)	(120,137)	(166,223)
Net loss per common share — basic and diluted(2) . . . . .	\$ (0.10)	\$ (0.09)	\$ (0.08)	\$ (0.11)

(1) The results of XM Holdings are included in the periods effective August 1, 2008.

(2) The sum of the quarterly net loss per share applicable to common stockholders (basic and diluted) does not necessarily agree to the net loss per share for the year due to the timing of our common stock issuances.

**(18) Condensed Consolidating Financial Information**

Sirius Asset Management, LLC and Satellite CD Radio, Inc. (collectively, the “Guarantor Subsidiaries”) are our wholly owned subsidiaries. The Guarantor Subsidiaries have fully and unconditionally, jointly and severally, directly or indirectly, guaranteed, on an unsecured basis, the debt issued by us in connection with certain of our financings. Our unrestricted subsidiary, XM Satellite Radio Holdings Inc. and its consolidated subsidiaries, are non-guarantor subsidiaries.

These condensed consolidating financial statements should be read in conjunction with the consolidated financial statements of Sirius XM Radio Inc. and Subsidiaries.

***Basis of Presentation***

In presenting the condensed consolidating financial statements, the equity method of accounting has been applied to (i) our interests in the Guarantor Subsidiaries and (ii) the Guarantor Subsidiaries’ interests in the Non-Guarantor Subsidiaries, where applicable, even though all such subsidiaries meet the requirements to be consolidated under U.S. generally accepted accounting principles. All intercompany balances and transactions between us, the Guarantor Subsidiaries and the Non-Guarantor Subsidiaries have been eliminated, as shown in the column “Eliminations.”

Our accounting bases in all subsidiaries, including goodwill and identified intangible assets, have been “pushed down” to the applicable subsidiaries.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING BALANCE SHEETS**  
**AS OF DECEMBER 31, 2008**

	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Current assets:						
Cash and cash equivalents . . . . .	\$ 173,647	\$ —	\$ —	\$ 206,799	\$ —	\$ 380,446
Accounts receivable, net . . . . .	95,247	—	—	52,727	—	147,974
Due from subsidiaries/affiliates . . . . .	64,279	—	—	2,751	(67,030)	—
Inventory, net . . . . .	19,973	—	—	4,489	—	24,462
Prepaid expenses . . . . .	29,852	—	—	37,351	—	67,203
Related party current assets . . . . .	1,814	—	—	112,363	—	114,177
Prepaid and other current assets . . . . .	17,513	—	—	53,004	(11,773)	58,744
Total current assets . . . . .	402,325	—	—	469,484	(78,803)	793,006
Property and equipment, net . . . . .	816,562	12,326	—	874,588	—	1,703,476
Investment in subsidiary/affiliates . . . . .	(525,687)	—	—	—	525,687	—
FCC license . . . . .	—	—	83,654	2,000,000	—	2,083,654
Restricted investments, net of current portion . .	21,000	—	—	120,250	—	141,250
Deferred financing fees, net . . . . .	9,853	—	—	30,303	—	40,156
Intangibles, net . . . . .	—	—	—	688,671	—	688,671
Goodwill . . . . .	—	—	—	—	1,834,856	1,834,856
Related party current assets, net of current portion . . . . .	—	—	—	124,607	—	124,607
Prepaid and other assets, net of current portion . . . . .	46,735	—	—	34,284	—	81,019
Total assets . . . . .	<u>\$ 770,788</u>	<u>\$12,326</u>	<u>\$ 83,654</u>	<u>\$ 4,342,187</u>	<u>\$ 2,281,740</u>	<u>\$ 7,490,695</u>
Current liabilities:						
Accounts payable and accrued expenses . . .	\$ 405,303	\$ —	\$ —	\$ 480,372	\$ (8,081)	\$ 877,594
Accrued interest . . . . .	25,920	—	—	50,543	—	76,463
Due to subsidiary/affiliates . . . . .	—	12,481	477	15,497	(28,455)	—
Deferred revenue . . . . .	557,392	—	—	419,707	8,081	985,180
Current portion of long-term debt . . . . .	4,244	—	—	355,739	39,743	399,726
Due to related parties . . . . .	23,018	—	—	83,930	(38,575)	68,373
Total current liabilities . . . . .	1,015,877	12,481	477	1,405,788	(27,287)	2,407,336
Long-term debt, net of current portion . . . . .	1,163,961	—	—	1,439,102	248,677	2,851,740
Deferred revenue, net of current portion . . . . .	116,634	—	—	131,255	—	247,889
Deferred credit on contracts . . . . .	—	—	—	1,037,190	—	1,037,190
Deferred tax liability . . . . .	4,990	—	14,761	886,475	(11,773)	894,453
Other long-term liabilities . . . . .	7,225	—	—	36,325	—	43,550
Total liabilities . . . . .	<u>2,308,687</u>	<u>12,481</u>	<u>15,238</u>	<u>4,936,135</u>	<u>209,617</u>	<u>7,482,158</u>
Commitments and contingencies						
Minority interest . . . . .	—	—	—	—	—	—
Stockholders' equity (deficit):						
Preferred stock . . . . .	25	—	—	—	—	25
Capital stock . . . . .	3,652	—	—	—	—	3,652
Accumulated other comprehensive income . .	(7,871)	—	—	(7,871)	7,871	(7,871)
Additional paid-in-capital . . . . .	9,724,991	—	83,654	5,870,502	(5,954,156)	9,724,991
Retained earnings (deficit) . . . . .	(11,258,696)	(155)	(15,238)	(6,456,579)	8,018,408	(9,712,260)
Total stockholders' equity (deficit) . . . . .	<u>(1,537,899)</u>	<u>(155)</u>	<u>68,416</u>	<u>(593,948)</u>	<u>2,072,123</u>	<u>8,537</u>
Total liabilities and stockholders' equity (deficit) . . . . .	<u>\$ 770,788</u>	<u>\$12,326</u>	<u>\$ 83,654</u>	<u>\$ 4,342,187</u>	<u>\$ 2,281,740</u>	<u>\$ 7,490,695</u>

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING BALANCE SHEETS**  
**AS OF DECEMBER 31, 2007**

	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non- Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Current assets:						
Cash and cash equivalents . . . . .	\$ 430,225	\$ —	\$ —	\$ 8,595	\$ —	\$ 438,820
Accounts receivable, net . . . . .	104,072	—	—	—	—	104,072
Due from subsidiaries/affiliates . . . . .	24,794	—	—	—	(24,794)	—
Inventory, net . . . . .	29,537	—	—	—	—	29,537
Prepaid expenses . . . . .	31,392	—	—	—	—	31,392
Related party current assets . . . . .	2,161	—	—	—	—	2,161
Restricted investments . . . . .	35,000	—	—	—	—	35,000
Prepaid and other current assets . . . . .	25,779	—	—	12,096	—	37,875
Total current assets . . . . .	682,960	—	—	20,691	(24,794)	678,857
Property and equipment, net . . . . .	801,446	4,817	—	—	—	806,263
Investment in subsidiary/affiliates . . . . .	58,222	—	—	—	(58,222)	—
FCC license . . . . .	—	—	83,654	—	—	83,654
Restricted investments, net of current portion . . . . .	18,000	—	—	—	—	18,000
Deferred financing fees, net . . . . .	13,864	—	—	—	—	13,864
Intangibles, net . . . . .	—	—	—	—	—	—
Related party current assets, net of current portion . . . . .	3,237	—	—	—	—	3,237
Prepaid and other assets, net of current portion . . . . .	90,274	—	—	—	—	90,274
Total assets . . . . .	<u>\$ 1,668,003</u>	<u>\$4,817</u>	<u>\$ 83,654</u>	<u>\$ 20,691</u>	<u>\$(83,016)</u>	<u>\$ 1,694,149</u>
Current liabilities:						
Accounts payable and accrued expenses . .	\$ 464,960	\$ —	\$ —	\$ 13,374	\$(13,391)	\$ 464,943
Accrued interest . . . . .	24,772	—	—	—	—	24,772
Due to subsidiary/affiliates . . . . .	—	4,900	477	19,417	(24,794)	—
Deferred revenue . . . . .	534,939	—	—	—	13,391	548,330
Current portion of long-term debt . . . . .	35,801	—	—	—	—	35,801
Due to related parties . . . . .	1,148	—	—	—	—	1,148
Total current liabilities . . . . .	1,061,620	4,900	477	32,791	(24,794)	1,074,994
Long-term debt, net of current portion . . . .	1,278,617	—	—	—	—	1,278,617
Deferred revenue, net of current portion . . .	110,525	—	—	—	—	110,525
Deferred tax liability . . . . .	—	—	12,771	—	—	12,771
Other long-term liabilities . . . . .	9,979	—	—	—	—	9,979
Total liabilities . . . . .	<u>2,460,741</u>	<u>4,900</u>	<u>13,248</u>	<u>32,791</u>	<u>(24,794)</u>	<u>2,486,886</u>
Commitments and contingencies						
Stockholders' equity (deficit):						
Capital stock . . . . .	1,471	—	—	—	—	1,471
Accumulated other comprehensive income . . . . .	—	—	—	—	—	—
Additional paid-in-capital . . . . .	3,604,764	—	83,654	—	(83,654)	3,604,764
Retained earnings (deficit) . . . . .	(4,398,973)	(83)	(13,248)	(12,100)	25,432	(4,398,972)
Total stockholders' equity (deficit) . . . .	<u>(792,738)</u>	<u>(83)</u>	<u>70,406</u>	<u>(12,100)</u>	<u>(58,222)</u>	<u>(792,737)</u>
Total liabilities and stockholders' equity (deficit) . . . . .	<u>\$ 1,668,003</u>	<u>\$4,817</u>	<u>\$ 83,654</u>	<u>\$ 20,691</u>	<u>\$(83,016)</u>	<u>\$ 1,694,149</u>

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS**  
**YEAR ENDED DECEMBER 31, 2008**

	<u>Sirius XM Radio Inc.</u>	<u>Sirius Asset Mgmt LLC</u>	<u>Satellite CD Radio</u>	<u>Non- Guarantors</u>	<u>Eliminations</u>	<u>Consolidated Sirius XM Radio Inc.</u>
Revenue . . . . .	\$ 1,151,906	\$ —	\$ —	\$ 512,086	\$ —	\$ 1,663,992
Cost of services . . . . .	621,877	—	—	241,570	—	863,447
Sales and marketing . . . . .	149,936	—	—	82,001	—	231,937
Subscriber acquisition costs . . .	306,130	—	—	65,213	—	371,343
General and administrative . . .	165,738	—	—	47,404	—	213,142
Engineering, design and development . . . . .	28,838	—	—	11,658	—	40,496
Depreciation and amortization . . . . .	109,370	72	—	94,310	—	203,752
Other . . . . .	10,434	—	—	6,601,046	(1,834,856)	4,776,624
Total operating expenses . . .	<u>1,392,323</u>	<u>72</u>	<u>—</u>	<u>7,143,202</u>	<u>(1,834,856)</u>	<u>6,700,741</u>
Operating loss . . . . .	(240,417)	(72)	—	(6,631,116)	1,834,856	(5,036,749)
Other income (expense):						
Interest and investment income . . . . .	5,783	—	—	3,296	—	9,079
Interest expense . . . . .	(71,605)	—	—	(107,155)	33,927	(144,833)
Gain (loss) on change in value of embedded derivative . . . . .	—	—	—	322,347	(322,347)	—
Loss from redemption of debt . . . . .	(98,203)	—	—	—	—	(98,203)
Equity in net loss of equity method investments . . . . .	(6,451,286)	—	—	(25,762)	6,446,541	(30,507)
Other income (expense) . . . .	<u>(4,472)</u>	<u>—</u>	<u>—</u>	<u>(5,127)</u>	<u>—</u>	<u>(9,599)</u>
Income (loss) before income taxes . . . . .	(6,860,200)	(72)	—	(6,443,517)	7,992,977	(5,310,812)
Provision for income taxes . . .	<u>477</u>	<u>—</u>	<u>(1,990)</u>	<u>(963)</u>	<u>—</u>	<u>(2,476)</u>
Net income (loss) . . . . .	<u><u>\$(6,859,723)</u></u>	<u><u>\$(72)</u></u>	<u><u>\$(1,990)</u></u>	<u><u>\$(6,444,480)</u></u>	<u><u>\$ 7,992,977</u></u>	<u><u>\$(5,313,288)</u></u>



**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS**  
**YEAR ENDED DECEMBER 31, 2007**

	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non- Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Revenue . . . . .	\$ 922,067	\$ —	\$ —	\$ (1)	\$ —	\$ 922,066
Cost of services . . . . .	539,132	—	—	1,183	—	540,315
Sales and marketing . . . . .	178,164	—	—	5,049	—	183,213
Subscriber acquisition costs . . . . .	406,256	—	—	1,386	—	407,642
General and administrative . . . . .	155,855	—	—	8	—	155,863
Engineering, design and development . . . . .	41,341	—	—	2	—	41,343
Depreciation and amortization . . . .	106,697	83	—	—	—	106,780
Other . . . . .	—	—	—	—	—	—
Total operating expenses . . . .	<u>1,427,445</u>	<u>83</u>	<u>—</u>	<u>7,628</u>	<u>—</u>	<u>1,435,156</u>
Operating loss . . . . .	(505,378)	(83)	—	(7,629)	—	(513,090)
Other income (expense):						
Interest and investment income . . . . .	20,570	—	—	—	—	20,570
Interest expense . . . . .	(70,328)	—	—	—	—	(70,328)
Loss from redemption of debt . .	—	—	—	—	—	—
Equity in net loss of equity method investments . . . . .	(10,147)	—	—	—	10,147	—
Other income (expense) . . . . .	<u>31</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>31</u>
Income (loss) before income taxes . . . . .	(565,252)	(83)	—	(7,629)	10,147	(562,817)
Provision for income taxes . . . . .	<u>—</u>	<u>—</u>	<u>(2,435)</u>	<u>—</u>	<u>—</u>	<u>(2,435)</u>
Net income (loss) . . . . .	<u>\$ (565,252)</u>	<u>\$ (83)</u>	<u>\$ (2,435)</u>	<u>\$ (7,629)</u>	<u>\$ 10,147</u>	<u>\$ (565,252)</u>

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS**  
**YEAR ENDED DECEMBER 31, 2006**

	<u>Sirius XM Radio Inc.</u>	<u>Sirius Asset Mgmt LLC</u>	<u>Satellite CD Radio</u>	<u>Non- Guarantors</u>	<u>Eliminations</u>	<u>Consolidated Sirius XM Radio Inc.</u>
Revenue . . . . .	\$ 637,235	\$—	\$ —	\$ —	\$ —	\$ 637,235
Cost of services . . . . .	743,527	—	—	307	—	743,834
Sales and marketing . . . . .	199,872	—	—	3,810	—	203,682
Subscriber acquisition costs . . . . .	450,892	—	—	722	—	451,614
General and administrative . . . . .	129,930	—	—	23	—	129,953
Engineering, design and development . . . . .	70,118	—	—	9	—	70,127
Depreciation and amortization . . .	105,749	—	—	—	—	105,749
Other . . . . .	—	—	—	—	—	—
Total operating expenses . . . .	<u>1,700,088</u>	<u>—</u>	<u>—</u>	<u>4,871</u>	<u>—</u>	<u>1,704,959</u>
Operating income (loss) . . . . .	(1,062,853)	—	—	(4,871)	—	(1,067,724)
Other income (expense):						
Interest and investment income . . . . .	33,320	—	—	—	—	33,320
Interest expense . . . . .	(64,032)	—	—	—	—	(64,032)
Loss from redemption of debt . .	—	—	—	—	—	—
Equity in net loss of equity method investments . . . . .	(11,380)	—	—	—	6,935	(4,445)
Other income (expense) . . . . .	<u>79</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>79</u>
Income (loss) before income taxes . . . . .	(1,104,866)	—	—	(4,871)	6,935	(1,102,802)
Provision for income taxes . . . . .	<u>—</u>	<u>—</u>	<u>(2,065)</u>	<u>—</u>	<u>—</u>	<u>(2,065)</u>
Net income (loss) . . . . .	<u><u>\$(1,104,866)</u></u>	<u><u>\$—</u></u>	<u><u>\$(2,065)</u></u>	<u><u>\$(4,871)</u></u>	<u><u>\$6,935</u></u>	<u><u>\$(1,104,867)</u></u>

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENT OF STOCKHOLDERS'**  
**EQUITY (DEFICIT) AND COMPREHENSIVE LOSS**  
**FOR THE YEARS ENDED DECEMBER 31, 2008, 2007 AND 2006**

	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non- Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Balance at December 31, 2005 . . . . .	\$ 324,966	\$ —	\$74,906	\$ 400	\$ (75,304)	\$ 324,968
Net loss . . . . .	(1,104,866)	—	(2,065)	(4,871)	6,935	(1,104,867)
Other comprehensive income . . . . .	—	—	—	—	—	—
Total comprehensive income . . . . .	(1,104,866)	—	(2,065)	(4,871)	6,935	(1,104,867)
Issuances of Common Stock to:						
Employees and employment benefit plans . . . . .	22,273	—	—	—	—	22,273
Third parties . . . . .	224,952	—	—	—	—	224,952
Share-based payment expense . . . . .	100,923	—	—	—	—	100,923
Exercise of options, \$3.52 to \$6.81 per share . . . . .	26,679	—	—	—	—	26,679
Exchange of 3½% Convertible Notes due 2008 . . . . .	16,001	—	—	—	—	16,001
Balance at December 31, 2006 . . . . .	\$ (389,072)	\$ —	\$72,841	\$ (4,471)	\$ (68,369)	\$ (389,071)
Net loss . . . . .	(565,252)	(83)	(2,435)	(7,629)	10,147	(565,252)
Other comprehensive income . . . . .	—	—	—	—	—	—
Total comprehensive income . . . . .	(565,252)	(83)	(2,435)	(7,629)	10,147	(565,252)
Issuances of Common Stock to:						
Employees and employment benefit plans . . . . .	19,246	—	—	—	—	19,246
Third parties . . . . .	82,941	—	—	—	—	82,941
Compensation in connection with the issuance of stock-based awards . . . . .	52,683	—	—	—	—	52,683
Exercise of options, \$2.79 to \$4.16 per share . . . . .	3,532	—	—	—	—	3,532
Exchange of 3½% Convertible Notes due 2008 . . . . .	3,182	—	—	—	—	3,182
Exchange of 2½% Convertible Notes due 2009 . . . . .	2	—	—	—	—	2
Balance at December 31, 2007 . . . . .	(792,738)	(83)	70,406	(12,100)	(58,222)	(792,737)
Net loss . . . . .	(6,859,723)	(72)	(1,990)	(6,444,480)	7,992,977	(5,313,288)
Other comprehensive loss:						
Available-for-sale securities . . . . .	(1,040)	—	—	(1,040)	1,040	(1,040)
Foreign currency translation adjustments . . . . .	(6,831)	—	—	(6,831)	6,831	(6,831)
Total Other Comprehensive Income . . . . .	(6,867,594)	(72)	(1,990)	(6,452,350)	8,000,848	(5,321,159)
Issuances of Common Stock to:						
XM Satellite Radio Holdings Stockholders . . . . .	5,460,853	—	—	—	—	5,460,853
Restricted Common Stock to XM Satellite Radio Holdings Stockholders . . . . .	66,628	—	—	—	—	66,628
Employees and employees benefit plans . . . . .	10,846	—	—	—	—	10,846
Share borrow agreements . . . . .	262	—	—	—	—	262
Series A convertible preferred . . . . .	47,095	—	—	—	—	47,095
Share-based payment expense . . . . .	83,610	—	—	—	—	83,610
Conversion of XM Satellite vested stock awards . . . . .	94,616	—	—	—	—	94,616
Conversion of XM Satellite outstanding stock awards . . . . .	115,784	—	—	—	—	115,784
Exercise of options, \$1.45 to \$3.36 per share . . . . .	208	—	—	—	—	208
Exchange of 3½% Convertible Notes due 2008 . . . . .	33,502	—	—	—	—	33,502
Exchange of 2½% Convertible Notes due 2009 . . . . .	209,113	—	—	—	—	209,113
Restricted shares withheld for tax upon vesting . . . . .	(84)	—	—	—	—	(84)
Balance at December 31, 2008 . . . . .	<u>\$(1,537,899)</u>	<u>\$(155)</u>	<u>\$68,416</u>	<u>\$(6,464,450)</u>	<u>\$7,942,626</u>	<u>\$ 8,537</u>

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS**  
**YEAR ENDED DECEMBER 31, 2008**

	<u>Sirius XM Radio Inc.</u>	<u>Sirius Asset Mgmt LLC</u>	<u>Satellite CD Radio</u>	<u>Non- Guarantors</u>	<u>Eliminations</u>	<u>Consolidated Sirius XM Radio Inc.</u>
Net cash (used in) provided by operating activities . . . . .	\$(159,080)	\$ 7,581	\$—	\$ (1,297)	\$ —	\$ (152,797)
Cash flows from investing activities:						
Additions to property and equipment . . . . .	(109,523)	(7,581)	—	(13,447)	—	(130,551)
Sales of property and equipment . . . . .	105	—	—	—	—	105
Purchases of restricted and other investments . . . . .	(3,000)	—	—	—	—	(3,000)
Acquisition of acquired entity cash . . . . .	—	—	—	—	819,521	819,521
Merger related costs . . . . .	(23,519)	—	—	—	—	(23,519)
Sale of restricted and other investments . . . . .	<u>40,469</u>	<u>—</u>	<u>—</u>	<u>25,400</u>	<u>—</u>	<u>65,869</u>
Net cash (used in) provided by investing activities . . . .	<u>(95,468)</u>	<u>(7,581)</u>	<u>—</u>	<u>11,953</u>	<u>819,521</u>	<u>728,425</u>
Cash flows from financing activities:						
Proceeds from exercise of warrants and stock options . .	471	—	—	—	—	471
Long term borrowings, net of related costs . . . . .	—	—	—	531,743	—	531,743
Payment of premiums on redemption of debt . . . . .	—	—	—	(18,693)	—	(18,693)
Payments to minority interest holder . . . . .	60,401	—	—	(61,880)	—	(1,479)
Repayment of long-term borrowings . . . . .	<u>(62,901)</u>	<u>—</u>	<u>—</u>	<u>(1,083,143)</u>	<u>—</u>	<u>(1,146,044)</u>
Net cash provided by (used in) financing activities . . . .	<u>(2,029)</u>	<u>—</u>	<u>—</u>	<u>(631,973)</u>	<u>—</u>	<u>(634,002)</u>
Net increase (decrease) in cash and cash equivalents . . . . .	(256,578)	—	—	(621,317)	819,521	(58,374)
Cash and cash equivalents at beginning of period . . . . .	<u>430,225</u>	<u>—</u>	<u>—</u>	<u>828,116</u>	<u>(819,521)</u>	<u>438,820</u>
Cash and cash equivalents at end of period . . . . .	<u>\$ 173,647</u>	<u>\$ —</u>	<u>\$—</u>	<u>\$ 206,799</u>	<u>\$ —</u>	<u>\$ 380,446</u>

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS**  
**YEAR ENDED DECEMBER 31, 2007**

	<u>Sirius XM Radio Inc.</u>	<u>Sirius Asset Mgmt LLC</u>	<u>Satellite CD Radio</u>	<u>Non-Guarantors</u>	<u>Eliminations</u>	<u>Consolidated Sirius XM Radio Inc.</u>
Net cash (used in) provided by operating activities . . . . .	\$(156,500)	\$ 476	\$—	\$7,258	—	\$(148,766)
Cash flows from investing activities:						
Additions to property and equipment . . . . .	(64,788)	(476)	—	—	—	(65,264)
Sales of property and equipment . . .	641	—	—	—	—	641
Merger related costs . . . . .	(29,444)	—	—	—	—	(29,444)
Purchases of restricted and other investments . . . . .	(310)	—	—	—	—	(310)
Sale of restricted and other investments . . . . .	<u>40,191</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>40,191</u>
Net cash (used in) provided by investing activities . . . . .	<u>(53,710)</u>	<u>(476)</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>(54,186)</u>
Cash flows from financing activities:						
Proceeds from exercise of warrants and stock options . . . . .	4,097	—	—	—	—	4,097
Long term borrowings, net of related costs . . . . .	244,879	—	—	—	—	244,879
Repayment of long-term borrowings . . . . .	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>(625)</u>	<u>(625)</u>
Net cash provided by (used in) financing activities . . . . .	<u>248,351</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>248,351</u>
Net increase (decrease) in cash and cash equivalents . . . . .	38,141	—	—	7,258	—	45,399
Cash and cash equivalents at beginning of period . . . . .	<u>392,084</u>	<u>—</u>	<u>—</u>	<u>1,337</u>	<u>—</u>	<u>393,421</u>
Cash and cash equivalents at end of period . . . . .	<u>\$ 430,225</u>	<u>\$ —</u>	<u>\$—</u>	<u>\$8,595</u>	<u>\$ —</u>	<u>\$ 438,820</u>

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS**  
**YEAR ENDED DECEMBER 31, 2006**

	<u>Sirius XM Radio Inc.</u>	<u>Sirius Asset Mgmt LLC</u>	<u>Satellite CD Radio</u>	<u>Non-Guarantors</u>	<u>Eliminations</u>	<u>Consolidated Sirius XM Radio Inc.</u>
Net cash (used in) provided by operating activities . . . . .	\$(425,390)	\$ 4,424	\$—	\$ (736)	\$—	\$(421,702)
Cash flows from investing activities:						
Additions to property and equipment . . . . .	(88,250)	(4,424)	—	—	—	(92,674)
Sales of property and equipment . . .	127	—	—	—	—	127
Purchases of restricted and other investments . . . . .	(12,339)	—	—	—	—	(12,339)
Purchases of available-for-sale securities . . . . .	(123,500)	—	—	—	—	(123,500)
Sale of restricted and other investments . . . . .	<u>255,715</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>255,715</u>
Net cash (used in) provided by investing activities . . . . .	<u>31,753</u>	<u>(4,424)</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>27,329</u>
Cash flows from financing activities:						
Proceeds from exercise of warrants and stock options . . . . .	<u>25,787</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>25,787</u>
Net cash provided by (used in) financing activities . . . . .	<u>25,787</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>25,787</u>
Net increase (decrease) in cash and cash equivalents . . . . .	(367,850)	—	—	(736)	—	(368,586)
Cash and cash equivalents at beginning of period . . . . .	<u>759,934</u>	<u>—</u>	<u>—</u>	<u>2,073</u>	<u>—</u>	<u>762,007</u>
Cash and cash equivalents at end of period . . . . .	<u>\$ 392,084</u>	<u>\$ —</u>	<u>\$—</u>	<u>\$1,337</u>	<u>\$—</u>	<u>\$ 393,421</u>

**(19) Subsequent Events**

***Conversion of 2½% Convertible Notes due 2009***

Since December 31, 2008, we have issued an aggregate of 139,400,000 shares of our common stock in exchange for \$18,000 principal amount of our 2½% Convertible Notes due 2009 (the “2½% Notes”) beneficially owned by institutional holders.

We did not receive any cash proceeds as a result of the exchange of our common stock for the 2½% Notes, which notes were retired and cancelled.

The issuance of the shares of our common stock were made pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended, contained in Section 3(a)(9) of such Act.



**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

***Refinancing of 10% Convertible Senior Notes due 2009***

On February 13, 2009, we entered into a note purchase agreement with purchasers named therein (collectively, the “Purchasers”), whereby the Purchasers exchanged \$172,485 aggregate principal amount of outstanding 10% Convertible Senior Notes due 2009 (the “Old Notes”) of XM Holdings for a like principal amount XM Holdings’ Senior PIK Secured Notes due June 2011 (the “New Notes”) in a private placement transaction pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”).

The New Notes are fully and unconditionally guaranteed by XM 1500 Eckington LLC and XM Investment LLC (together, the “Subsidiary Guarantors”). The New Notes are secured by a first-priority lien on substantially all of the personal and real estate property of the Subsidiary Guarantors. XM Holdings may, at its option, redeem some or all of the New Notes at any time at 100% of the principal amount prepaid, together with accrued and unpaid interest, if any.

We paid to the Purchasers a fee (the “Fee”) equal to, at each Purchaser’s election, either (i) 833 shares of our common stock (the “Structuring Fee Shares”) for every \$1 principal amount of Old Notes exchanged or (ii) an amount in cash equal to \$50 for every \$1 principal amount of Old Notes exchanged (the “Cash Election”). The total number of Structuring Fee Shares delivered was 59,718,519, and the aggregate cash delivered was approximately \$5,100. The Structuring Fee Shares were issued pursuant to an exemption from the registration requirements of the Securities Act.

***Investment by Liberty Media Corporation and its affiliate, Liberty Radio, LLC***

Liberty Media Corporation and its affiliate, Liberty Radio, LLC, have invested an aggregate of \$350,000 in the form of loans, are committed to invest an additional \$180,000 million in loans, and have received a significant equity interest in us.

***Phase One: Sirius Credit Agreement***

On February 17, 2009, SIRIUS entered into a Credit Agreement (the “Sirius Credit Agreement”) with Liberty Media Corporation, as administrative agent and collateral agent. The Sirius Credit Agreement provides for a \$250,000 term loan and \$30,000 of purchase money loans. Concurrently with entering into the Sirius Credit Agreement, SIRIUS borrowed \$250,000 under the term loan facility. The proceeds of the term loan were used (i) to repay at maturity our outstanding 2½% Convertible Notes due February 17, 2009 and (ii) for general corporate purposes, including related transaction costs.

The loans under the Sirius Credit Agreement bear interest at a rate of 15% per annum. Commencing on March 31, 2010, the loans amortize in quarterly installments equal to: (i) 0.25% of the aggregate principal amount of the loans outstanding on January 1, 2010 and (ii) after December 31, 2011, 25% of the aggregate principal amount of the loans outstanding on January 1, 2012. The loan matures on December 20, 2012. We paid Liberty Media Corporation a structuring fee of \$30,000 in connection with the Sirius Credit Agreement. In addition, we will pay a commitment fee of 2.0% per annum on the unused portion of the purchase money loan facility.

The loans under the Sirius Credit Agreement are guaranteed by Satellite CD Radio, Inc. and Sirius Asset Management Company LLC, SIRIUS’ wholly owned subsidiaries. The loans are secured by a lien on substantially all of SIRIUS’ assets. The affirmative covenants, negative covenants and event of default provisions in the Sirius Credit Agreement are substantially similar to those in the Term Credit Agreement, dated as of June 20, 2007, among SIRIUS, the lenders party thereto and Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Phase One: Investment Agreement*

On February 17, 2009, SIRIUS entered into an Investment Agreement (the “Investment Agreement”) with Liberty Radio, LLC (the “Purchaser”), an indirect wholly-owned subsidiary of Liberty Media Corporation. Pursuant to the Investment Agreement, SIRIUS agreed to issue to the Purchaser 12,500,000 shares of convertible preferred stock with a liquidation preference of \$0.001 per share in partial consideration for the loan investments described herein.

Upon expiration of the applicable waiting period under the Hart-Scott-Rodino Act, the preferred stock will be convertible into 40% of our outstanding shares of common stock (after giving effect to such conversion). The Purchaser has agreed not to acquire more than 49.9% of our outstanding common stock for three years. Certain of the standstill restrictions will cease to apply after two years.

The rights, preferences and privileges of the preferred stock are set forth in a Certificate of Designations filed with the Secretary of State of the State of Delaware. The holders of the preferred stock are entitled to appoint a proportionate number of our board of directors based on their ownership levels from time to time. The Certificate of Designations also provides that so long as the Purchaser beneficially owns at least half of its initial equity investment, we need the consent of the Purchaser for certain actions, including:

- the grant or issuance of our equity securities;
- any merger or sale of all or substantially all of our assets;
- any acquisition or disposition of assets other than in the ordinary course of business above certain thresholds;
- the incurrence of debt in amounts greater than a stated threshold;
- engaging in a business different than the business currently conducted by us; and
- amending our certificate of incorporation or by-laws in a manner that materially adversely affects the holders of the preferred stock.

The preferred stock, with respect to dividend rights, ranks on a parity with our common stock, and with respect to rights on liquidation, winding-up and dissolution, rank senior to our common stock. Dividends on the preferred stock are payable, on a non-cumulative basis, as and if declared on our common stock, in cash, on an as-converted basis.

*Phase Two: XM Credit Agreement; Amendment and Restatement of Existing XM Bank Facilities; and Issuance of the Preferred Stock*

*XM Credit Agreement.* On February 17, 2009, XM Satellite Radio Inc. entered into a Credit Agreement (the “XM Credit Agreement”) with Liberty Media Corporation, as administrative agent and collateral agent. The XM Credit Agreement provides for a \$150,000 term loan.

On March 6, 2009, XM amended and restated the XM Credit Agreement (the “Second-Lien Credit Agreement”) with Liberty Media Corporation, and simultaneously closed the facility. Pursuant to the Second-Lien Credit Agreement, XM may borrow \$150,000 aggregate principal amount of term loans on December 1, 2009. The proceeds of the loans will be used to repay a portion of the 10% Convertible Notes due 2009 of XM Holdings on the stated maturity date thereof. The Second-Lien Credit Agreement matures on March 1, 2011, and bears interest at 15% per annum. XM will pay a commitment fee of 2.0% per annum on the undrawn portion of the Second-Lien Credit Agreement until the date of disbursement of the loans or the termination of the commitments.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The loans under the Second-Lien Credit Agreement are guaranteed by XM Holdings and each of the subsidiary guarantors named therein. The loan is secured by a second lien on substantially all the assets of XM Holdings, XM and certain subsidiaries named therein. The affirmative covenants, negative covenants and event of default provisions contained in the Second-Lien Credit Agreement are substantially similar to those contained in the First-Lien Credit Agreement (as defined below).

*Amendment and Restatement of Existing XM Bank Facilities.* On March 6, 2009, XM amended and restated (i) the \$100,000 Credit Agreement, dated as of June 26, 2008, among XM, XM Holdings, the lenders named therein and UBS AG, as administrative agent (the “UBS Term Loan”) and (ii) the \$250,000 Credit Agreement, dated as of May 5, 2006, among XM, XM Holdings, the lenders named therein and JPMorgan Chase Bank, N.A., as administrative agent (the “JPM Revolver” and, together with the UBS Term Loan, the “Previous Facilities”). The Previous Facilities have been combined as term loans into the Amended and Restated Credit Agreement, dated as of March 6, 2009, among XM, XM Holdings, the lenders named therein and JPMorgan Chase Bank, N.A., as administrative agent (the “First-Lien Credit Agreement”), and Liberty Media LLC (the “Purchaser”) has purchased \$100,000 aggregate principal amount of such loans from the lenders. XM paid a restructuring fee of 2% to the existing lenders under the Previous Facilities.

Loans under the First-Lien Credit Agreement held by existing lenders (the “Tranche A” and the “Tranche B” term loans) will mature on May 5, 2010 and the remaining loans purchased by Liberty (the “Tranche C” term loans) will mature on May 5, 2011. The Tranche A and the Tranche B term loans are subject to scheduled quarterly amortization payments of \$25,000 starting on March 31, 2009. The Tranche C term loans are subject to a partial amortization of \$25,000 on March 31, 2010, with all remaining amounts due on the final maturity date. Pursuant to these maturities and the scheduled amortization payments, of the outstanding principal amount, \$100,000 of the \$350,000 is due in 2009; \$175,000 is due in 2010; and \$75,000 is due in 2011. The loans will bear interest at rates ranging from prime plus 11% to LIBOR (subject to a 3% floor) plus 12%.

The loans under the First-Lien Credit Agreement are guaranteed by XM Holdings and each of the subsidiary guarantors named therein. The loans are secured by a first lien on substantially all of the assets of XM Holdings, XM and certain subsidiaries named therein. The affirmative covenants, negative covenants and event of default provisions contained in the First-Lien Credit Agreement are substantially similar to those contained in the Previous Facilities, except that: (i) XM must maintain cash reserves of \$75 million (without taking into account any proceeds from the Second-Lien Credit Agreement (as defined above)), (ii) we must maintain cash reserves of \$35 million, (iii) XM Holdings and XM must maintain certain EBITDA levels set forth therein and (iv) an event of default shall occur upon the acceleration of any our material indebtedness or in the event of our voluntary or involuntary bankruptcy.

*Issuance of the Preferred Stock.* On March 6, 2009, we issued 12,500,000 shares of our preferred stock in consideration for the investments described herein. The rights, preferences and privileges of the preferred stock are described in the applicable Certificate of Designations. A summary of the terms of each Certificate of Designations is described above. The foregoing description of the Certificates of Designations does not purport to be a complete description of all of the terms of such Certificate of Designations and is qualified in its entirety by reference to the Certificate of Designations for the preferred, copies of which are filed as Exhibits 3.1 and 3.2 to the Current Report on Form 8-K dated March 6, 2009 filed with the Securities and Exchange Commission, and each Certificate of Designations is incorporated herein by reference.

***9.75% Senior Supplemental Indenture***

On March 6, 2009, XM executed and delivered a Third Supplemental Indenture (the “XM 9.75% Notes Supplemental Indenture”), dated as of March 6, 2009, by and among XM, XM Holdings, XM Equipment Leasing LLC, XM Radio Inc. and The Bank of New York Mellon, as trustee, which supplements the indenture, dated as of May 1, 2006, among XM, XM Holdings, XM Equipment Leasing LLC and the trustee with respect to XM’s 9.75% Senior Notes due 2014 (the “9.75% Notes”).

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The XM 9.75% Notes Supplemental Indenture was entered into in connection with XM's previously announced tender offer and consent solicitation with respect to the XM 9.75% Notes commenced on July 29, 2008. As part of the offer, XM sought and received the requisite consents from holders of the XM 9.75% Notes to proposed amendments relating to the XM 9.75% Notes and the related indenture. The XM 9.75% Notes Supplemental Indenture contains the proposed amendments which amend the indenture to eliminate substantially all of the restrictive covenants contained in the indenture and the XM 9.75% Notes, eliminate certain events of default and modify or eliminate certain other provisions contained in the indenture and the XM 9.75% Notes.

Under the Indenture, dated as of July 31, 2008, among XM Escrow LLC and The Bank of New York Mellon, as trustee, relating to the 13% Senior Notes due 2014 (the "XM 13% Notes"), the maturity of the XM 13% Notes changes from August 1, 2014 to August 1, 2013 when certain conditions have been satisfied. Following the execution of the XM 9.75% Notes Supplemental Indenture, all of these conditions have been satisfied and the XM 13% Notes will mature on August 1, 2013.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**

**Schedule II — Schedule of Valuation and Qualifying Accounts**

<u>Description</u>	<u>Balance January 1,</u>	<u>Charged to Expenses</u>	<u>Write-offs/ Payments/ Other</u>	<u>Balance December 31,</u>
	(In thousands)			
2006				
Allowance for doubtful accounts . . . . .	\$ 1,550	9,370	(5,909)	\$ 5,011
Deferred tax assets — valuation allowance . . . . .	\$ 793,808	433,387	—	\$1,227,195
2007				
Allowance for doubtful accounts . . . . .	\$ 5,011	9,002	(9,405)	\$ 4,608
Deferred tax assets — valuation allowance . . . . .	\$1,227,195	198,897	—	\$1,426,092
2008				
Allowance for doubtful accounts . . . . .	\$ 4,608	21,589	(15,337)	\$ 10,860
Deferred tax assets — valuation allowance . . . . .	\$1,426,092	99,659	1,950,832	\$3,476,583

(1) Adjustments to reflect allocation of the purchase price in connection with the Merger

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## NOTICE OF ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON WEDNESDAY, MAY 27, 2009

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To our Stockholders:

You are cordially invited to attend our Annual Meeting of Stockholders, which will be held on Wednesday, May 27, 2009, at 9:00 a.m., New York City time, in The Auditorium at The Equitable Center, 787 Seventh Avenue, New York, New York 10019. The annual meeting is being held to:

1. Elect twelve directors.
2. Approve an amendment to our certificate of incorporation to increase the number of authorized shares of our common stock from 8,000,000,000 to 9,000,000,000 shares.
3. Approve an amendment to our certificate of incorporation to (i) effect a reverse stock split of our common stock by a ratio of not less than one-for-ten and not more than one-for-fifty at any time prior to June 30, 2010, with the exact ratio to be set at a whole number within this range to be determined by our board of directors in its discretion, and (ii) reduce the number of authorized shares of our common stock as set forth in the proxy statement. Our stockholders approved an amendment to our certificate of incorporation at our 2008 annual meeting of stockholders held on December 18, 2008 to authorize an amendment to our certificate of incorporation to effect a reverse stock split, increase the number of authorized shares under our certificate of incorporation following a reverse stock split, and provide for certain other actions described herein. Approval of this amendment to our certificate of incorporation would extend previous authority to effect a reverse stock split to June 30, 2010 from December 31, 2009.
4. Approve the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan.
5. Ratify the appointment of KPMG LLP as our independent registered public accountants for 2009.
6. Transact any other business, including consideration of one stockholder proposal, that may properly come before the meeting and any adjournments thereof.

Only stockholders of record at the close of business on March 30, 2009 are entitled to vote at the annual meeting. A list of stockholders entitled to vote will be available for examination for the ten days prior to the annual meeting, between the hours of 9:00 a.m. and 4:00 p.m., New York City time, at our offices at 1221 Avenue of the Americas, 36th Floor, New York, New York 10020.

Whether or not you expect to attend in person, we urge you to vote your shares via the Internet, by phone, or by signing, dating, and returning the enclosed proxy card at your earliest convenience. This will ensure the presence of a quorum at the meeting. If you wish to vote your shares by mail, an addressed envelope for which no postage is required if mailed in the United States is enclosed.

**Voting over the Internet or by telephone is fast, convenient, and your vote is immediately confirmed and tabulated. Most important, by using the Internet or telephone, you help us reduce postage and proxy tabulation costs. If you received a paper copy of the proxy materials, please do not return the enclosed paper ballot if you are voting over the Internet or by telephone.**

### **If You Plan to Attend**

**Please note that space limitations make it necessary to limit attendance to stockholders. Admission to the meeting will be on a first-come, first-served basis. Stockholders holding stock in brokerage accounts ("street name" holders) will need to bring a copy of a brokerage statement reflecting stock ownership as of the record date to enter the meeting. Cameras, recording devices and other electronic equipment will not be permitted in the meeting.**

By Order of the Board of Directors,



PATRICK L. DONNELLY  
*Executive Vice President, General Counsel and Secretary*

New York, New York  
April 30, 2009





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## PROXY STATEMENT

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This proxy statement contains information related to the annual meeting of stockholders of Sirius XM Radio Inc. to be held on Wednesday, May 27, 2009, beginning at 9:00 a.m., New York City time, in The Auditorium at The Equitable Center, 787 Seventh Avenue, New York, New York 10019, and at any postponements or adjournments thereof. This proxy statement is being distributed or made available, as the case may be, to stockholders on or about May 5, 2009.

**A copy of our Annual Report on Form 10-K for the year ended December 31, 2008, as filed with the Securities and Exchange Commission, except for exhibits, will be furnished without charge to any stockholder upon written request to Sirius XM Radio Inc., Attention: Corporate Secretary, 1221 Avenue of the Americas, 36th Floor, New York, New York 10020.**

## ABOUT THE MEETING

### What is the purpose of the annual meeting?

At our annual meeting, stockholders will act upon the matters outlined in the Notice of Annual Meeting, including:

- the election of twelve directors to our board (Joan L. Amble, Leon D. Black, Lawrence F. Gilberti, Eddy W. Hartenstein, James P. Holden, Chester A. Huber, Jr., Mel Karmazin, John W. Mendel, James F. Mooney, Gary M. Parsons, Jack Shaw and Jeffrey D. Zients) (these twelve directors are referred to as the "Common Stock Directors"), which will be voted upon by the holders of our common stock and our Series A Convertible Preferred Stock, voting together as a single class;
- the approval of an amendment to our certificate of incorporation to increase the number of authorized shares of our common stock from 8,000,000,000 to 9,000,000,000 shares, which will be voted upon by holders of our common stock, our Series A Convertible Preferred Stock and our Convertible Perpetual Preferred Stock, Series B-1 (the "Series B-1 Preferred Stock"), voting together as a single class, and by holders of our common stock, voting as a separate class;
- the approval of an amendment to our certificate of incorporation which will effect a reverse stock split of our common stock and reduce the number of authorized shares of our common stock as set forth in Item 3 below, which will be voted upon by holders of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, and by holders of our common stock, voting as a separate class;
- the approval of the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan, which will be voted upon by the holders of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class;
- the ratification of the appointment of KPMG LLP as our independent registered public accountants, which will be voted upon by the holders of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class; and
- such other business, including consideration of one stockholder proposal, that may properly be conducted at the annual meeting or any adjournment or postponement thereof.

An affiliate of Liberty Media Corporation owns all of the outstanding shares of our Series B-1 Preferred Stock. That holder of the Series B-1 Preferred Stock does not have the right to vote with the holders of our common stock and the holders of our Series A Convertible Preferred Stock to elect the Common Stock Directors at the annual meeting. Instead, the Series B-1 Preferred Stock is entitled to designate and elect up to six members of our board of directors (the "Preferred Stock Directors"). Gregory B. Maffei was elected to our board of directors on March 17, 2009 as a Preferred Stock Director, and John C. Malone and David J.A. Flowers were elected to our board of directors on April 21, 2009 as Preferred Stock Directors. Liberty Media Corporation has informed us that, at this time, it does not intend to exercise its rights to appoint additional members to our board of directors.

At the annual meeting management will also report on our performance and respond to questions from stockholders.

### **What are the voting rights of the holders of our common stock and our preferred stock?**

Each holder of our common stock is entitled to one vote per common share on all matters to be acted upon at the annual meeting and the holder of our Series A Convertible Preferred Stock is entitled to 1/5 of a vote per share of our Series A Convertible Preferred Stock on all matters to be acted upon at the annual meeting. Holders of our common stock shall also vote separately as a class to approve each amendment to our certificate of incorporation.

The holder of our Series B-1 Preferred Stock does not have the right to vote with the holders of our common stock and our Series A Convertible Preferred Stock to elect the Common Stock Directors at the annual meeting. On all other matters submitted to a vote of the holders of our common stock, the holder of our Series B-1 Preferred Stock is entitled to slightly less than 207 votes per share of Series B-1 Preferred Stock, voting together with the holders of our common stock and Series A Convertible Preferred Stock as a single class. On the record date, 3,856,414,132 shares of our common stock were outstanding. In addition, 24,808,959 shares of our Series A Convertible Preferred Stock, representing aggregate voting power of 4,961,792 shares of common stock, and 12,500,000 shares of our Series B-1 Preferred Stock, representing aggregate voting power of 2,586,976,762 shares of common stock, are outstanding.

### **What vote is required to approve each item?**

Assuming the presence of a quorum, the twelve Common Stock Directors who receive the most votes from the holders of shares of our common stock and our Series A Convertible Preferred Stock for their election will be elected, *i.e.*, the affirmative vote of the holders of a plurality of the shares of common stock and Series A Convertible Preferred Stock voting at the annual meeting is required for the election of the Common Stock Directors, voting together as a single class.

Approval of an amendment to our certificate of incorporation to increase the number of authorized shares of our common stock from 8,000,000,000 to 9,000,000,000 shares requires the affirmative vote of a majority of the voting power of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, and a majority of holders of our common stock, voting as a separate class. As a result, abstentions and broker non-votes will have the same effect as negative votes.

Approval of an amendment to our certificate of incorporation to effect a reverse stock split of our outstanding common stock at a ratio of not less than one-for-ten and not more than one-for-fifty, with the exact ratio to be set at a whole number within this range to be determined by our board of directors, together with the reduction in the number of authorized shares of our common stock as set forth in Item 3 below, requires the affirmative vote of a majority of the voting power of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, and a majority of holders of our common stock, voting as a separate class. As a result, abstentions and broker non-votes will have the same effect as negative votes.

The affirmative vote of the holders of a majority of the voting power of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, present, in person or by proxy, and entitled to vote at the annual meeting is required to ratify the appointment of KPMG LLP as our independent registered public accountants, to approve the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan and to act upon any other matter that may properly come before the meeting.

**When will voting results be available?**

We will announce preliminary results at the annual meeting. We will report final results in our Quarterly Report on Form 10-Q for the second quarter of 2009.

**Who can attend the annual meeting?**

Subject to space availability, all stockholders as of March 30, 2009 (the “Record Date”), or their duly appointed proxies, may attend the meeting. Since seating is limited, admission to the meeting will be on a first-come, first-served basis. Registration and seating will begin at 8:30 a.m., New York City time.

**What constitutes a quorum?**

The presence, in person or by proxy, of the holders of a majority of the voting power of the issued and outstanding shares of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock entitled to vote at the annual meeting is necessary to constitute a quorum to transact business. In addition, the presence, in person or by proxy, of a majority of the voting power of the issued and outstanding shares of our common stock entitled to vote at the annual meeting is necessary to constitute a quorum to transact business with regards to the proposals amending our certificate of incorporation. If a quorum is not present or represented at the annual meeting, the stockholders entitled to vote thereat, present in person or by proxy, may adjourn the annual meeting from time to time without notice or other announcement until a quorum is present or represented.

As of the Record Date, holders of our common stock and our Series A Convertible Preferred Stock held approximately 60% of the general voting power, and holders of our Series B-1 Preferred Stock held approximately 40% of the general voting power. General voting power refers to all securities entitled to vote at the annual meeting. With respect to an individual proposal, voting power refers to all securities entitled to vote on the proposal.

**What is a broker non-vote?**

Brokers who hold shares on behalf of their customers have the authority to vote on certain proposals when they have not received instructions from beneficial owners. A broker non-vote occurs when a broker holding shares for a beneficial owner does not vote on a particular proposal because the broker does not have discretionary voting power with respect to that item and has not received voting instructions from the beneficial owner.

**How do I vote?**

Stockholders of record can vote as follows:

- *Via the Internet:* Stockholders may vote through the Internet at [www.eproxy.com/siri](http://www.eproxy.com/siri) by following the instructions included with your proxy card. You will need the 12-digit Control Number included on your proxy card to obtain your records and to create an electronic voting instruction form.
- *By Telephone:* Stockholders may vote by telephone 1-866-580-9477 by following the instructions included with your proxy card. You will need the 12-digit Control Number included on the proxy card in order to vote by telephone.
- *By Mail:* Stockholders who received a proxy card along with a proxy statement from us, may sign, date and return their proxy cards in the pre-addressed, postage-paid envelope that is provided.
- *At the Meeting:* If you attend the annual meeting, you may vote in person by ballot, even if you have previously returned a proxy card or otherwise voted.

If your shares are held in “street name,” please check your proxy card or contact your broker or nominee to determine whether you will be able to vote by telephone or electronically. The deadline for voting by telephone or electronically is 5:00 p.m., New York City time, on Tuesday, May 26, 2009. “Street name”



stockholders who wish to vote in person at the meeting will need to obtain a proxy form from the institution that holds their shares.

This proxy statement and the 2008 Annual Report to Stockholders are available at <http://bnymellon.mobular.net/bnymellon/siri>.

### **What is householding?**

As permitted by the Securities Exchange Act of 1934, as amended, only one copy of this proxy statement and annual report is being delivered to stockholders residing at the same address, unless the stockholders have notified us of their desire to receive multiple copies of our proxy statement. This is known as householding.

We will promptly deliver, upon oral or written request, a separate copy of this proxy statement and annual report to any stockholder residing at an address to which only one copy was mailed. Requests for additional copies for this year or future years should be directed to: Sirius XM Radio Inc., Attention: Corporate Secretary, 1221 Avenue of the Americas, 36th Floor, New York, New York 10020.

Stockholders of record residing at the same address and currently receiving multiple copies of this proxy statement may contact our Corporate Secretary to request that only a single copy of our proxy statement be mailed in the future.

### **Can I change my vote?**

Yes. You may change your vote at any time before your shares are voted at the annual meeting by:

- Notifying our Corporate Secretary in writing at Sirius XM Radio Inc., 1221 Avenue of the Americas, 36th Floor, New York, New York 10020 that you are revoking your proxy; or
- Executing and delivering a later dated proxy card or submitting a later dated vote by telephone or the Internet; or
- Voting in person at the annual meeting.

However, if you have shares held through a brokerage firm, bank or other custodian, you may revoke your instructions only by informing the custodian in accordance with any procedures it has established.

### **Who will count the votes?**

A representative of BNY Mellon Shareowner Services will tabulate the votes and act as inspector of elections.

### **What is a proxy?**

A proxy is a person you appoint to vote on your behalf. We are soliciting your vote so that all shares of our common stock may be voted at the annual meeting.

### **Who am I designating as my proxy?**

You will be designating Patrick L. Donnelly, our Executive Vice President, General Counsel and Secretary, and Ruth A. Ziegler, our Senior Vice President and Deputy General Counsel, as your proxies. However, you may appoint a person (who need not be a stockholder) other than Patrick L. Donnelly and Ruth A. Ziegler to represent you at the meeting by completing another proper proxy.

### **How will my proxy vote my shares?**

Your proxy will vote according to your instructions. If you complete your proxy card but do not indicate your vote on one or all of the business matters, your proxy will vote "FOR" items 1, 2, 3, 4 and 5 and "AGAINST" item 6. Also, your proxy is authorized to vote on any other business that properly comes before the annual meeting in accordance with the recommendation of our board of directors.

### **What happens if a nominee for director is unable to serve as a director?**

If any Common Stock Director nominee becomes unavailable for election, votes will be cast for such substitute nominee or nominees as may be designated by our board of directors, unless our board of directors reduces the number of directors on our board.

### **Who is soliciting my proxy, and who will pay the costs of the solicitation?**

SIRIUS XM is soliciting your proxy. The cost of soliciting proxies will be borne by SIRIUS XM, which has engaged MacKenzie Partners, Inc. to assist in the distribution and solicitation of proxies. We have agreed to pay MacKenzie \$10,000 plus reimburse the firm for its reasonable out-of-pocket expenses. We will also reimburse brokerage firms, banks and other custodians for their reasonable out-of-pocket expenses for forwarding these proxy materials to you. Our directors, officers and employees may solicit proxies on our behalf by telephone or in writing.

### **When, and how, do I submit a proposal for next year's annual meeting of stockholders?**

To be eligible for inclusion in our proxy statement and form of proxy for next year's annual meeting, stockholder proposals must be submitted in writing by the close of business on December 24, 2009, which would be at least 120 days prior to the anticipated 2010 meeting, to Patrick L. Donnelly, Executive Vice President, General Counsel and Secretary, Sirius XM Radio Inc., 1221 Avenue of the Americas, 36th Floor, New York, New York 10020.

If any proposal that is not submitted for inclusion in next year's proxy statement (as described in the preceding paragraph) is instead sought to be presented directly at next year's annual meeting, the proxies may vote in their discretion if (a) we receive notice of the proposal before the close of business on March 9, 2010 and advise stockholders in next year's proxy statement about the nature of the matter and how management intends to vote on such matter or (b) we do not receive notice of the proposal prior to the close of business on March 9, 2010. Notices of intention to present proposals at next year's annual meeting should be addressed to Patrick L. Donnelly, Executive Vice President, General Counsel and Secretary, Sirius XM Radio Inc., 1221 Avenue of the Americas, 36th Floor, New York, New York 10020.

## **STOCK OWNERSHIP**

### **Who are the principal owners of SIRIUS XM's stock?**

The following table sets forth information regarding beneficial ownership of our common stock as of April 29, 2009 by each person known by us to be the beneficial owner of more than 5% of our outstanding common stock. In general, "beneficial ownership" includes those shares a person has the power to vote or transfer, and options to acquire our common stock that are exercisable currently or become exercisable within 60 days. We believe that the beneficial owner of the common stock listed below, based on information furnished by this owner, has sole investment and voting power with respect to these shares.

<u>Name and Address of Beneficial Owner of Common Stock</u>	<u>Shares Beneficially Owned as of April 29, 2009</u>	
	<u>Number</u>	<u>Percent</u>
Liberty Media Corporation(1). . . . . 12300 Liberty Boulevard Englewood, CO 80112	2,586,976,762	40%

- (1) Liberty Radio LLC, an affiliate of Liberty Media Corporation, owns 12,500,000 shares of our Series B-1 Preferred Stock. Each share of our Series B-1 Preferred Stock is convertible into 206.9581409 shares of our common stock. Our Series B-1 Preferred Stock is convertible into an aggregate of 2,586,976,762 shares of our common stock.

## How much stock do the directors and executive officers of SIRIUS XM own?

The following table shows the number of shares of common stock beneficially owned by each of our directors, our Chief Executive Officer, our Chief Financial Officer and the four other most highly compensated executive officers as of February 28, 2009. The table also shows common stock beneficially owned by all of our directors and executive officers as a group as of February 28, 2009.

<u>Name of Beneficial Owner</u>	<u>Number of Shares Beneficially Owned(1)</u>	<u>Percent of Class</u>	<u>Shares Acquirable within 60 days</u>
Joan L. Amble . . . . .	92,000	*	—
Leon D. Black(2) . . . . .	104,876	*	—
Lawrence F. Gilberti . . . . .	219,161	*	—
Eddy W. Hartenstein . . . . .	138,000	*	—
James P. Holden . . . . .	238,123	*	—
Chester A. Huber, Jr.(3) . . . . .	—	*	—
Gregory B. Maffei(4) . . . . .	—	*	—
John W. Mendel(5) . . . . .	400	*	—
James F. Mooney(6) . . . . .	158,621	*	—
Gary M. Parsons(7) . . . . .	13,404,403	*	—
Jack Shaw . . . . .	491,082	*	—
Jeffrey D. Zients . . . . .	1,334,000	*	—
Mel Karmazin . . . . .	32,714,367	*	—
Scott A. Greenstein . . . . .	4,063,537	*	—
James E. Meyer . . . . .	2,769,111	*	—
Dara F. Altman . . . . .	1,131,953	*	—
Patrick L. Donnelly . . . . .	2,858,539	*	—
David J. Frear(8) . . . . .	3,449,419	*	—
All Executive Officers and Directors as a Group (18 persons)(9) . . . . .	63,167,592	1.6%	—

\* Less than 1% of our outstanding shares of common stock.

- (1) These amounts include shares of common stock, restricted shares of common stock and restricted stock units which the individuals hold and shares of common stock they have a right to acquire within 60 days after February 28, 2009 through the exercise of stock options as shown in the last column. Also included are the shares of common stock acquired under our 401(k) savings plan as of February 28, 2009: Mr. Karmazin — 214,367 shares; Mr. Greenstein — 57,326 shares; Mr. Meyer — 61,059 shares; Ms. Altman — 20,527; Mr. Donnelly — 13,041 shares; and Mr. Frear — 53,682 shares.
- (2) Mr. Black is the founding partner of Apollo Management, L.P., an affiliate of Apollo Investment Fund IV, L.P. and Apollo Overseas Partners IV, L.P. The number of shares shown in the table includes shares that Mr. Black owns directly. Mr. Black disclaims beneficial ownership of shares owned by Apollo Investment Fund IV, L.P. and Apollo Overseas Partners IV, L.P.
- (3) Mr. Huber is an employee of General Motors, which beneficially owns 24,808,959 shares of our Series A Convertible Preferred Stock. Mr. Huber disclaims beneficial ownership of the shares owned by General Motors.
- (4) Mr. Maffei is an employee of Liberty Media Corporation, which beneficially owns 12,500,000 shares of our Series B-1 Preferred Stock. Mr. Maffei disclaims beneficial ownership of the shares owned by an affiliate of Liberty Media Corporation.
- (5) Mr. Mendel is an employee of American Honda, which beneficially owns 93,835,676 shares of our common stock. Mr. Mendel disclaims beneficial ownership of the shares owned by American Honda.

- (6) Includes 9,100 shares held as custodian for a child.
- (7) Includes 74,423 shares held as custodian for a child.
- (8) Includes 1,900 shares held by Mr. Frear's spouse.
- (9) Does not include 18,124,258 shares issuable under stock options that are not exercisable within 60 days after February 28, 2009.

### **Section 16(a) Beneficial Ownership Reporting Compliance**

Based solely upon a review of Form 4s furnished to us during our most recent fiscal year, we know of no director, executive officer or beneficial owner of more than ten percent of our common stock who failed to file on a timely basis reports of beneficial ownership of our common stock as required by Section 16(a) of the Securities Exchange Act of 1934, as amended, other than a late filing by Ms. Dara Altman and Mr. James Rhyu, our former Senior Vice President and Chief Accounting Officer, in connection with the sale of certain common stock to pay federal and state taxes associated with the vesting of restricted stock in December 2008.

### **Shareholder Rights Plan**

On April 28, 2009, our board of directors adopted a rights plan to protect against limitations on our ability to use our net operating loss carryforwards and certain other tax benefits to reduce potential future federal income tax obligations. The rights plan is intended to act as a deterrent to any person or group acquiring 4.9% or more of our outstanding common stock (assuming for purposes of this calculation that all of our outstanding convertible preferred stock is converted into common stock) without the approval of our board of directors. We plan to submit the rights plan to a stockholder vote by June 30, 2010, and if stockholders do not approve the rights plan by this date it will terminate. The rights plan will expire on the earlier of (i) August 1, 2011 and (ii) June 30, 2010 if our stockholders have not approved the rights plan as noted above. Additional information regarding the rights plan is available in the Current Report on Form 8-K dated April 29, 2009 filed with the Securities and Exchange Commission.

## GOVERNANCE OF THE COMPANY

### What are the responsibilities of the board of directors?

The business and affairs of our company are managed by or under the direction of our board of directors. Our board reviews and ratifies senior management selection and compensation, monitors overall corporate performance and ensures the integrity of our financial controls. Our board of directors also oversees our strategic and business planning processes.

### What are the current committees of the board of directors and who are the members of these committees?

Our board of directors maintains an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee.

A copy of the charters for the Audit Committee and the Nominating and Corporate Governance Committee are available on our website at [www.siriusxm.com](http://www.siriusxm.com). The Compensation Committee has not adopted a charter.

The number of committee meetings held during 2008 are as follows: 12 audit committee meetings, 5 compensation committee meetings and one nominating and corporate governance committee meeting.

The following table shows the current members and chair of each committee and the principal functions performed by each committee:

<u>Committee</u>	<u>Functions</u>
<b>Audit</b> Members: Joan L. Amble* Eddy W. Hartenstein James P. Holden James F. Mooney	<ul style="list-style-type: none"><li>• Selects our independent registered public accounting firm</li><li>• Reviews reports of our independent registered public accounting firm</li><li>• Reviews and approves the scope and cost of all services, including all non-audit services, provided by the firm selected to conduct the audit</li><li>• Monitors the effectiveness of the audit process</li><li>• Reviews adequacy of financial and operating controls</li><li>• Monitors corporate compliance program</li></ul>
<b>Compensation</b> Members: Lawrence F. Gilberti* James P. Holden Jack Shaw Jeffrey D. Zients	<ul style="list-style-type: none"><li>• Reviews our executive compensation policies and strategies</li><li>• Oversees and evaluates our overall compensation structure and programs</li></ul>
<b>Nominating and Corporate Governance</b> Members: Lawrence F. Gilberti James F. Mooney* Jack Shaw Jeffrey D. Zients	<ul style="list-style-type: none"><li>• Develops and implements policies and practices relating to corporate governance</li><li>• Reviews and monitors implementation of our policies and procedures</li><li>• Assists in developing criteria for open positions as Common Stock Directors on the board of directors</li><li>• Reviews background information on potential candidates for Common Stock Directors and makes recommendations to the board of directors</li><li>• Makes recommendations to the board of directors with respect to committee assignments</li></ul>

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\* Chair

### **How often are directors elected to the board?**

All Common Stock Directors stand for election annually. The Preferred Stock Directors will serve until their respective successors have been duly elected and qualified pursuant to the Certificate of Designations for the Series B-1 Preferred Stock. Our board reaffirms its accountability to common stockholders through this annual election process.

### **How are nominees for the board of directors selected?**

Our Nominating and Corporate Governance Committee reviews possible candidates to be Common Stock Directors and is responsible for overseeing matters of corporate governance, including the evaluation of performance and practices of the board of directors, the board's committees, management succession plans and executive resources. The Nominating and Corporate Governance Committee considers suggestions from many sources, including stockholders, for possible Common Stock Directors. Such suggestions, together with appropriate biographical information, should be submitted to our Corporate Secretary, Sirius XM Radio Inc., 1221 Avenue of the Americas, 36th Floor, New York, New York 10020. Candidates who are suggested by our stockholders are evaluated by the Nominating and Corporate Governance Committee in the same manner as are other possible candidates to be Common Stock Directors. During 2008, our board of directors did not retain any third parties to assist in the process of identifying and evaluating potential nominees to be Common Stock Directors.

In its assessment of each potential candidate, including those recommended by stockholders, the Nominating and Corporate Governance Committee takes into account all factors it considers appropriate, which may include (a) ensuring that the board of directors, as a whole, is diverse and consists of individuals with various and relevant career experience, relevant technical skills, industry knowledge and experience, financial expertise (including expertise that could qualify a director as a "financial expert," as that term is defined by the rules of the SEC), local or community ties and (b) minimum individual qualifications, including strength of character, mature judgment, familiarity with our business and related industries, independence of thought and an ability to work collegially. The Nominating and Corporate Governance Committee also may consider the extent to which the candidate would fill a present need on the board of directors. After conducting an initial evaluation of a candidate, the Nominating and Corporate Governance Committee will interview that candidate if it believes the candidate might be suitable to be a Common Stock Director and may also ask the candidate to meet with other directors and management. If the Nominating and Corporate Governance Committee believes a candidate would be a valuable addition to the board of directors, it will recommend to the full board that candidate's election as a Common Stock Director.

### **Who is the board's chairman?**

Gary M. Parsons is the chairman of our board of directors. The chairman of our board organizes the work of the board and ensures that the board has access to sufficient information to enable the board to carry out its functions, including monitoring our performance and the performance of management. The chairman, among other things, presides over meetings of the board of directors, establishes the agendas of each meeting of the board in consultation with our Chief Executive Officer, oversees the distribution of information to directors, and performs other duties or assignments as agreed with either the board of directors or our Chief Executive Officer.

### **How does the board determine which directors are considered independent?**

Our board reviews the independence of our directors annually. The provisions of our *Corporate Governance Guidelines* regarding director independence meet, and in some areas exceed, the listing standards of the NASDAQ Global Select Market. A copy of the *Guidelines* is available on our website at [www.siriusxm.com](http://www.siriusxm.com).

Pursuant to the *Guidelines*, the board undertook a review of director independence in January 2009 and April 2009. As part of this review, we reviewed written questionnaires submitted by each director. The questionnaires disclose transactions and relationships between each director or members of his immediate family and SIRIUS XM, other directors, members of our senior management and our affiliates.

As a result of this review, the board determined that all of our directors and nominees are independent of the company and its management under the standards set forth in our *Guidelines*, with the exception of Mel Karmazin and Gary M. Parsons, each of whom is an employee, Chester A. Huber, Jr. and John W. Mendel, who are employees of General Motors and American Honda, respectively, and Gregory B. Maffei, John C. Malone and David J.A. Flowers, each of whom is an employee of Liberty Media Corporation. With respect to Joan L. Amble, the board evaluated ordinary course transactions during the last three fiscal years between us and the American Express Company, for which she serves as an executive officer, and found that the amount paid by us to American Express was less than 5% of American Express' consolidated gross revenues during its last three fiscal years.

The board has also determined that all of the members of the Audit Committee are financially literate and meet the independence requirements mandated by the applicable NASDAQ listing standards, Section 10A(m)(3) of the Securities Exchange Act of 1934 and our *Guidelines*. The board has determined that all of the members of the Compensation Committee meet the independence requirements mandated by the applicable NASDAQ listing standards, the rules of the SEC and the Internal Revenue Service applicable to serving on the Compensation Committee and our *Guidelines*. The board has determined that all of the members of the Nominating and Corporate Governance Committee meet the independence requirements mandated by the NASDAQ listing standards applicable to serving on the Nominating and Corporate Governance Committee and our *Guidelines*.

### **What are our policies and procedures for related party transactions?**

We have adopted a written policy and written procedures for the review, approval and monitoring of transactions involving the company and "related persons." For the purposes of the policy, "related persons" include executive officers, directors and director nominees or their immediate family members, or stockholders owning five percent or greater of our common stock.

Our related person transaction policy requires:

- that any transaction in which a related person has a material direct or indirect interest and which exceeds \$120,000, such transaction referred to as a "related person" transaction, and any material amendment or modification to a related person transaction, be reviewed and approved or ratified by a committee of the board composed solely of independent directors who are disinterested or by the disinterested members of the board; and
- that any employment relationship or transaction involving an executive officer and any related compensation must be approved by the Compensation Committee of the board or recommended by the Compensation Committee to the board for its approval.

In connection with the review and approval or ratification of a related person transaction, management must:

- disclose to the committee or disinterested directors, as applicable, the material terms of the related person transaction, including the approximate dollar value of the amount involved in the transaction, and all the material facts as to the related person's direct or indirect interest in, or relationship to, the related person transaction;
- advise the committee or disinterested directors, as applicable, as to whether the related person transaction complies with the terms of our agreements governing our material outstanding indebtedness that limit or restrict our ability to enter into a related person transaction;
- advise the committee or disinterested directors, as applicable, as to whether the related person transaction will be required to be disclosed in our SEC filings. To the extent required to be disclosed, management must ensure that the related person transaction is disclosed in accordance with SEC rules; and
- advise the committee or disinterested directors, as applicable, as to whether the related person transaction constitutes a "personal loan" for purposes of Section 402 of the Sarbanes-Oxley Act of 2002.



In addition, the related person transaction policy provides that the Compensation Committee, in connection with any approval or ratification of a related person transaction involving a non-employee director or director nominee, should consider whether such transaction would compromise the director or director nominee's status as an "independent," "outside," or "non-employee" director, as applicable, under the rules and regulations of the SEC, NASDAQ and Internal Revenue Code.

Since the beginning of 2008, we did not enter into any transactions with related persons that were subject to our related person transaction policy.

### ***Relationship with General Motors***

#### ***Distribution Agreement***

Our wholly-owned subsidiary, XM Satellite Radio Inc. ("XM"), has a long-term distribution agreement with General Motors Corp. GM has a representative on our board of directors and is considered a related party. During the term of the agreement, which expires in 2020, GM has agreed to distribute the XM service.

In order to encourage the broad installation of XM radios in GM vehicles, XM has agreed to subsidize a portion of the cost of XM radios, and to make incentive payments to GM when the owners of GM vehicles with installed XM radios become subscribers to XM's service. XM must also share with GM a percentage of the subscription revenue attributable to GM vehicles with installed XM radios. As part of the agreement, GM provides certain call-center related services directly to XM subscribers who are also GM customers for which we reimburse GM.

#### ***Bandwidth***

XM has agreed to make bandwidth available to OnStar Corporation for audio and data transmissions to owners of XM-enabled GM vehicles, regardless of whether they are XM subscribers. XM can use the bandwidth until it is actually used by OnStar. OnStar's use of XM's bandwidth must be in compliance with applicable laws, must not compete or adversely interfere with XM's business, and must meet XM's quality standards. XM also granted to OnStar a certain amount of time to use XM's studios on an annual basis and agreed to provide certain audio content for distribution on OnStar's services.

### ***Relationship with American Honda***

XM has agreed to make a certain amount of its bandwidth available to American Honda. American Honda has a representative on our board of directors and is considered a related party. XM can use the bandwidth until it is actually used by American Honda. American Honda's use of XM's bandwidth must be in compliance with applicable laws, must not compete or adversely interfere with XM's business, and must meet XM's quality standards. This agreement remains in effect so long as American Honda holds a certain amount of its investment in us. In January 2007, XM announced a 10-year extension to its arrangement with American Honda to be its supplier of satellite radio and related data services in Honda and Acura vehicles. XM also agreed to make incentive payments to American Honda for each purchaser of a Honda or Acura vehicle that becomes a self-paying XM subscriber and share with American Honda a portion of the subscription revenue attributable to Honda and Acura vehicles with installed XM radios.

### ***Relationship with Liberty Media***

Liberty Media Corporation and its affiliate, Liberty Media, LLC, have invested in us an aggregate of \$350 million in the form of loans, and are committed to invest an additional \$180 million in loans.

#### ***Sirius Credit Agreement***

On February 17, 2009, we entered into a Credit Agreement (the "Sirius Credit Agreement") with Liberty Media Corporation, as administrative agent and collateral agent, and Liberty Media, LLC, as lender. The Sirius Credit Agreement provides for a \$250 million term loan and \$30 million of purchase money loans.

Concurrently with entering into the Sirius Credit Agreement, we borrowed \$250 million under the term loan facility.

The loans under the Sirius Credit Agreement bear interest at a rate of 15% per annum. Commencing on March 31, 2010, the loans amortize in quarterly installments equal to: (i) 0.25% of the aggregate principal amount of the loans outstanding on January 1, 2010 and (ii) after December 31, 2011, 25% of the aggregate principal amount of the loans outstanding on January 1, 2012. The loan matures on December 20, 2012. We paid Liberty Media Corporation a structuring fee of \$30 million in connection with the Sirius Credit Agreement. In addition, we pay a commitment fee of 2% per annum on the unused portion of the purchase money loan facility.

The loans under the Sirius Credit Agreement are guaranteed by Satellite CD Radio, Inc. and Sirius Asset Management Company LLC, our wholly owned subsidiaries. The loans are secured by a lien on substantially all of our assets. The affirmative covenants, negative covenants and event of default provisions in the Sirius Credit Agreement are substantially similar to those in the Term Credit Agreement, dated as of June 20, 2007, among us, the lenders party thereto and Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent.

#### *Investment Agreement*

On February 17, 2009, we entered into an investment Agreement (the “Investment Agreement”) with Liberty Radio, LLC, an indirect wholly-owned subsidiary of Liberty Media Corporation. Pursuant to the Investment Agreement, we agreed to issue to Liberty Radio, LLC 12,500,000 shares of convertible preferred stock with a liquidation preference of \$0.001 per share in partial consideration for the loan investments described herein. The preferred stock was issued on March 6, 2009, as described below. See “Relationship with Liberty Media — Issuance of the Preferred Stock”.

The preferred stock is convertible into 40% of our outstanding shares of common stock (after giving effect to such conversion). Liberty Radio, LLC has agreed not to acquire more than 49.9% of our outstanding common stock for three years from the date the preferred stock was issued, except that Liberty Radio, LLC may acquire more than 49.9% of our outstanding common stock at any time after the second anniversary of such date pursuant to any cash tender offer for all of the outstanding shares of our common stock that are not beneficially owned by Liberty Radio, LLC or its affiliates at a price per share greater than the closing price of the common stock on the trading day preceding the earlier of the public announcement or commencement of such tender offer. The Investment Agreement also provides for certain other standstill provisions during such three year period.

The rights, preferences and privileges of the preferred stock are set forth in the Certificate of Designations of Convertible Perpetual Preferred Stock, Series B-1 (the “Certificate of Designations”), filed with the Secretary of State of the State of Delaware. The holder of our preferred stock is entitled to appoint a proportionate number of our board of directors based on its ownership levels from time to time. The Certificate of Designations also provides that so long as at least 6,250,000 shares of Series B-1 Preferred Stock are outstanding, we need the consent of the holder of the Series B-1 Preferred Stock for certain actions, including:

- the grant or issuance of our equity securities;
- any merger or sale of all or substantially all of our assets;
- any acquisition or disposition of assets other than in the ordinary course of business above certain thresholds;
- the incurrence of debt in amounts greater than a stated threshold;
- engaging in a business different than the business currently conducted by us; and
- amending our certificate of incorporation or by-laws in a manner that materially adversely affects the holders of the preferred stock.

The preferred stock, with respect to dividend rights, ranks on a parity with our common stock, and with respect to rights on liquidation, winding-up and dissolution, ranks senior to our common stock. Dividends on the preferred stock are payable, on a non-cumulative basis, as and if declared on our common stock, in cash, on an as-converted basis.

### *XM Credit Agreement*

On February 17, 2009, XM, entered into a Credit Agreement with Liberty Media Corporation, as administrative agent and collateral agent, and Liberty Media, LLC, as lender.

On March 6, 2009, XM amended and restated that credit agreement (the “Second-Lien Credit Agreement”) with Liberty Media Corporation. Pursuant to the Second-Lien Credit Agreement, XM may borrow \$150 million of term loans on December 1, 2009. The proceeds of these loans will be used to repay a portion of the 10% Convertible Notes due 2009 of our wholly-owned subsidiary, and the parent of XM, XM Satellite Radio Holdings Inc. (“XM Holdings”) on the stated maturity date thereof. The Second-Lien Credit Agreement matures on March 1, 2011, and bears interest at 15% per annum. XM pays a commitment fee of 2% per annum on the undrawn portion of the Second-Lien Credit Agreement until the date of disbursement of the loans or the termination of the commitments.

The loans under the Second-Lien Credit Agreement are guaranteed by XM Holdings and each of the subsidiary guarantors named therein. The loan is secured by a second-lien on substantially all the assets of XM Holdings, XM and certain subsidiaries named therein. The affirmative covenants, negative covenants and event of default provisions contained in the Second-Lien Credit Agreement are substantially similar to those contained in the First-Lien Credit Agreement (as defined below).

### *Amendment and Restatement of Existing XM Bank Facilities*

On March 6, 2009, XM amended and restated (i) the \$100 million Credit Agreement, dated as of June 26, 2008, among XM, XM Holdings, the lenders named therein and UBS AG, as administrative agent (the “UBS Term Loan”) and (ii) the \$250 million Credit Agreement, dated as of May 5, 2006, among XM, XM Holdings, the lenders named therein and JPMorgan Chase Bank, N.A., as administrative agent (the “JPM Revolver” and, together with the UBS Term Loan, the “Previous Facilities”). The Previous Facilities were combined as term loans into the Amended and Restated Credit Agreement, dated as of March 6, 2009, among XM, XM Holdings, the lenders named therein and JPMorgan Chase Bank, N.A., as administrative agent (the “First-Lien Credit Agreement”), and Liberty Media, LLC purchased \$100 million aggregate principal amount of such loans from the lenders. XM paid a restructuring fee of 2% to the existing lenders under the Previous Facilities.

Loans under the First-Lien Credit Agreement held by existing lenders (the “Tranche A” and the “Tranche B” term loans) mature on May 5, 2010 and the remaining loans purchased by Liberty (the “Tranche C” term loans) mature on May 5, 2011. The Tranche A and the Tranche B term loans are subject to four scheduled quarterly amortization payments of \$25 million, which amortization started on March 31, 2009. The Tranche C term loans are subject to a partial amortization of \$25 million on March 31, 2010, with all remaining amounts due on the final maturity date. Pursuant to these maturities and the scheduled amortization payments, of the outstanding principal amount, \$100 million of the \$350 million is due in 2009; \$175 million is due in 2010; and \$75 million is due in 2011. The loans bear interest at rates ranging from prime plus 11% to LIBOR (subject to a 3% floor) plus 12%.

The loans under the First-Lien Credit Agreement are guaranteed by XM Holdings and each of the subsidiary guarantors named therein. The loans are secured by a first-lien on substantially all of the assets of XM Holdings, XM and certain subsidiaries named therein. The affirmative covenants, negative covenants and event of default provisions contained in the First-Lien Credit Agreement are substantially similar to those contained in the Previous Facilities, except that: (i) XM must maintain cash reserves of \$75 million (without taking into account any proceeds from the Second-Lien Credit Agreement (as defined above)), (ii) we must maintain cash reserves of \$35 million, (iii) XM Holdings and XM must maintain certain EBITDA levels and (iv) an event of default shall occur upon the acceleration of any of our material indebtedness or in the event of our voluntary or involuntary bankruptcy.

### *Issuance of the Preferred Stock*

On March 6, 2009, we issued 1,000,000 shares of our Series B-1 Preferred Stock in consideration for the investments described herein and 11,500,000 nonvoting shares of Convertible Perpetual Preferred Stock, Series B-2 (the “Series B-2 Preferred Stock”). All of the shares of our Series B-2 Preferred Stock were

converted into 11,500,000 shares of Series B-1 Preferred Stock on April 21, 2009. The rights, preferences and privileges of the preferred stock are described in the Certificate of Designations. A summary of the terms of the Certificate of Designations is described above. The foregoing description of the Certificate of Designations does not purport to be a complete description of all of the terms of such Certificate of Designations and is qualified in its entirety by reference to the Certificate of Designations, a copy of which are filed as Exhibit 3.1 to the Current Report on Form 8-K dated March 6, 2009 filed with the Securities and Exchange Commission.

#### **Who is the Audit Committee's financial expert?**

Our board of directors has determined that Joan L. Amble, the chairwoman of the Audit Committee and an independent director, is qualified as an "audit committee financial expert" within the meaning of SEC regulations, and she has accounting and related financial management expertise within the meaning of the listing standards of the NASDAQ.

#### **How often did the board meet during 2008?**

During 2008, there were nine meetings of our board of directors and one written consent in lieu of a meeting. Each director, other than Leon Black, attended more than 75% of the total number of meetings of the board and meetings held by committees on which he or she served. Directors are encouraged to attend the annual meeting of stockholders. Ms. Amble and Messrs. Gilberti, Shaw, Parsons and Karmazin attended our 2008 annual meeting of stockholders.

#### **How can stockholders communicate with the board of directors?**

Stockholders may communicate directly with our board of directors, or specified individual directors, according to the procedures described on our website at [www.siriusxm.com](http://www.siriusxm.com).

Our Corporate Secretary reviews all correspondence to our directors and forwards to the board a summary and/or copies of any such correspondence that, in the opinion of the Corporate Secretary, deals with the functions of the board or committees thereof or that he otherwise determines requires their attention. Directors may at any time review all correspondence received by us that is addressed to members of our board.

In addition, the Audit Committee has established procedures for the receipt, retention and treatment, on a confidential basis, of complaints received by us, our board of directors and the Audit Committee regarding accounting, internal accounting controls or auditing matters, and the confidential, anonymous submissions by employees of concerns regarding questionable accounting or auditing matters. These procedures are available upon request.

#### **Does SIRIUS XM have corporate governance guidelines and a code of ethics?**

Our board of directors has adopted *Corporate Governance Guidelines* which set forth a flexible framework within which the board, assisted by its committees, directs our affairs. The *Guidelines* cover, among other things, the composition and functions of our board of directors, director independence, management succession and review, committee assignments and selection of new members of our board of directors. A copy of the *Guidelines* is available on our website at [www.siriusxm.com](http://www.siriusxm.com).

Our board of directors has also adopted a *Code of Ethics*, which is applicable to all our employees, including our chief executive officer, principal financial officer and principal accounting officer.

Our *Code of Ethics* is available on our website at [www.siriusxm.com](http://www.siriusxm.com) and in print to any stockholder who requests it from our Corporate Secretary. If we amend or waive the *Code of Ethics* with respect to our chief executive officer, principal financial officer or principal accounting officer, we will post the amendment or waiver at this location on our website.

## REPORT OF THE AUDIT COMMITTEE

*The following Report of the Audit Committee does not constitute soliciting material and should not be deemed filed or incorporated by reference into any other filing by us under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent we specifically incorporate this Report by reference therein.*

The SEC rules require us to include in this proxy statement a report from the Audit Committee of our board of directors. The following report concerns the Audit Committee's activities regarding oversight of our financial reporting and auditing process.

The Audit Committee is comprised solely of independent directors, as defined in the Marketplace Rules of the NASDAQ Global Select Market and under Securities Exchange Act Rule 10A-3(b)(1), and it operates under a written charter adopted by our board of directors. A copy of the Audit Committee's existing charter is available on our website at [www.siriusxm.com](http://www.siriusxm.com). The composition of the Audit Committee, the attributes of its members and the responsibilities of the Audit Committee, as reflected in its charter, are intended to be in accordance with applicable requirements for corporate audit committees. The Audit Committee reviews and assesses the adequacy of its charter on an annual basis.

The Audit Committee met twelve times during 2008. The Audit Committee schedules its meetings with a view to ensuring that it devotes appropriate attention to all of its tasks. The Audit Committee's meetings include regular executive sessions with our independent registered public accounting firm, internal auditor and outside counsel, without the presence of our management. The Audit Committee reviewed our key initiatives and programs aimed at strengthening the effectiveness of our internal and disclosure control structure.

As described more fully in its charter, the purpose of the Audit Committee is to assist our board of directors in its general oversight of our financial reporting, internal control and audit functions. Management is responsible for the preparation, presentation and integrity of our consolidated financial statements; accounting and financial reporting principles; and internal controls and procedures designed to ensure compliance with accounting standards, applicable laws and regulations. KPMG LLP, our independent registered public accounting firm, is responsible for performing an independent audit of our consolidated financial statements in accordance with auditing standards generally accepted in the United States.

The Audit Committee members are not professional accountants or auditors, and their functions are not intended to duplicate or to certify the activities of management and our independent registered public accounting firm, nor can the Audit Committee certify that our independent registered public accounting firm is "independent" under applicable rules. The Audit Committee serves a board-level oversight role, in which it provides advice, counsel and direction to management and our independent registered public accounting firm on the basis of the information it receives, its discussions with management and our independent registered public accounting firm and the experience of the Audit Committee's members in business, financial and accounting matters.

Among other matters, the Audit Committee monitors the activities and performance of our independent registered public accounting firm, including the audit scope, external audit fees, auditor independence matters and the extent to which the independent registered public accounting firm may be retained to perform non-audit services. The Audit Committee and our board of directors have ultimate authority and responsibility to select, evaluate and, when appropriate, replace our independent registered public accounting firm. The Audit Committee also reviews the results of the audit work with regard to the adequacy and appropriateness of our financial, accounting and internal controls. The Audit Committee also covers various topics and events that may have significant financial impact or are the subject of discussions between management and the independent registered public accounting firm. In addition, the Audit Committee generally oversees our internal compliance programs.

The Audit Committee has reviewed and discussed our consolidated financial statements with management and our independent registered public accounting firm. Management represented to the Audit Committee that our consolidated financial statements were prepared in accordance with U.S. generally accepted accounting principles, and our independent registered public accounting firm represented that its presentations included

the matters required to be discussed with the Audit Committee by Statement on Auditing Standards No. 61, as amended, "Communication with Audit Committees." In addition, the Audit Committee has received from the auditors the letter and written disclosures with respect to fiscal 2008, which are required by the Public Company Accounting Oversight Board, and has discussed with them their independence from the company and its management. Furthermore, the Audit Committee considered and determined that the auditors' non-audit services to the company were consistent with the guidelines established to ensure auditor independence.

Following the Audit Committee's discussions with management and KPMG LLP, the Audit Committee recommended that our board of directors include the audited consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2008.

#### Audit Committee

JOAN L. AMBLE, CHAIRWOMAN  
EDDY W. HARTENSTEIN  
JAMES P. HOLDEN  
JAMES F. MOONEY

### Principal Accountant Fees and Services

The following table sets forth the fees billed to us by KPMG LLP and Ernst & Young LLP, our former independent registered public accounting firm, as of and for the years ended December 31, 2008 and 2007:

	For the Year Ended December 31, 2008			For the Year Ended December 31, 2007
	KPMG	E&Y	Total	
Audit fees(1) . . . . .	\$2,127,102	\$437,500	\$2,564,602	\$1,301,500
Audit-related fees(2) . . . . .	25,000	—	25,000	35,000
Tax fees . . . . .	—	—	—	—
All other fees(3). . . . .	241,550	—	241,550	—
	<u>\$2,393,652</u>	<u>\$437,500</u>	<u>\$2,831,152</u>	<u>\$1,336,500</u>

- (1) Audit fees billed by KPMG LLP and Ernst & Young LLP related to the audits of our annual consolidated financial statements and internal control over financial reporting; the review of our interim consolidated financial statements; and review of documents filed with the SEC, including comment letters, consents and registration statements.
- (2) Audit-related fees billed by KPMG LLP and Ernst & Young LLP in 2008 and 2007 related to audits of employee benefit plans.
- (3) Tax compliance, tax consulting and 2007 tax provision services performed prior to KPMG LLP's appointment as our independent auditor.

### Pre-Approval Policy for Services of Independent Auditor

It is the Audit Committee's responsibility to review and consider, and ultimately pre-approve, all audit and permitted non-audit services to be performed by our independent registered public accounting firm. In accordance with its charter, the Audit Committee has established pre-approval policies with respect to audit and permitted non-audit services to be provided by our independent registered public accounting firm. The following sets forth the primary principles of the Audit Committee's pre-approval policies:

- The independent registered public accounting firm is not permitted to perform consulting, legal, book-keeping, valuation, internal audit, management functions, or other prohibited services, under any circumstances;



- The engagement of our independent registered public accounting firm, including related fees, with respect to the annual audits and quarterly reviews of our consolidated financial statements is specifically approved by the Audit Committee on an annual basis;
- The Audit Committee reviews and pre-approves a detailed list of other audit and audit-related services annually or more frequently, if required. Such services generally include services performed under the audit and attestation standards established by regulatory authorities or standard setting bodies and include services related to SEC filings, employee benefit plan audits and subsidiary audits;
- The Audit Committee reviews and pre-approves a detailed list of permitted non-audit services annually or more frequently, if required; and
- The Audit Committee pre-approves each proposed engagement to provide services not previously included in the approved list of audit and non-audit services and for fees in excess of amounts previously pre-approved.

The Audit Committee has delegated to the chair of the Audit Committee the authority to approve permitted services by the independent registered public accounting firm so long as he or she reports decisions to the Audit Committee at its next meeting.

All of the services covered under the captions “Audit Fees” and “Audit-Related Fees” were pre-approved by the Audit Committee.

The Audit Committee has appointed KPMG LLP to audit our 2009 consolidated financial statements.

## **EXECUTIVE COMPENSATION**

### **Compensation Discussion and Analysis**

Our Compensation Discussion and Analysis, or “CD&A,” is organized into the following sections:

- Introduction;
- Overall program objectives and processes;
- Elements of the executive compensation program for our named executive officers (the six executive officers named in our summary compensation table); and
- Other arrangements and policies relating to our executive compensation program.

### **Introduction**

We have designed our executive compensation program to (1) support our corporate strategy and business by rewarding performance; (2) retain and recruit highly qualified and effective executive talent; and (3) create a strong performance alignment with stockholders’ interests. We have achieved these objectives through a compensation program consisting primarily of three elements: base salary, performance-based annual bonus and equity compensation.

Unprecedented global economic conditions presented challenges for many companies in 2008, including us. The decline in current market conditions and related changes in the status of our business caused us to make adjustments to our compensation program in 2008. Our Compensation Committee approved increases in the base salaries of our named executives officers (other than Mr. Karmazin and Ms. Altman), which were in keeping with our historical practices and which the committee believed were necessary in order to remain competitive and compensate the executives for increased responsibilities brought about by the merger and changing economic conditions. However, our Compensation Committee has not yet awarded any annual bonuses with respect to the year ended December 31, 2008. Changes in economic conditions in 2009 may cause us to make additional adjustments to our compensation program. As economic conditions change, we will respond with innovation and flexibility, as needed, to advance our objectives of motivating, attracting and retaining high-quality employees.



## **Overall Program Objectives and Processes**

### ***Program Objectives***

We strive to attract, motivate and retain high-quality executives by providing total compensation that is performance-based and competitive with the various markets and industries in which we compete for talent. We attempt to provide incentives to advance the interests of stockholders and deliver levels of compensation that are commensurate with performance. Overall, we design our executive compensation program to:

- support our corporate strategy and business plan by clearly communicating goals and objectives to executives and by rewarding achievement;
- retain and recruit highly qualified and effective executive talent; and
- create a strong performance alignment with stockholders' interests.

Currently, we seek to achieve these objectives through three key compensation elements:

- a base salary;
- a performance-based annual bonus (that constitutes the short-term incentive element of our program), which may be paid in cash, restricted stock units, shares of stock or a combination of these; and
- grants of long-term, equity-based compensation (that constitute the long-term incentive element of our program), such as stock options and/or restricted stock units, which may be subject to time-based and/or performance-based vesting requirements.

The Compensation Committee believes that this three-part approach is consistent with programs adopted by similarly situated companies and best serves the interests of our stockholders. The approach is an effort to meet the requirements of the competitive environment in which we operate, while ensuring that executive officers are compensated in a manner that advances both the short- and long-term interests of our stockholders.

The Compensation Committee believes that delivering compensation in the form of, or based on the value of, our common stock promotes alignment between executive performance and stockholder interests. Accordingly, the value of our common stock represents a large portion of our executives' annual and long-term compensation, including stock options and/or restricted stock units, bonuses settled in stock or restricted stock units, matching contributions under the Sirius 401(k) Savings Plan and the profit sharing component of the Sirius 401(k) Savings Plan. Compensation for our executives also involves a high proportion of pay that is "at risk" — namely, the annual bonus and the value of stock options and restricted stock units. This "at risk" compensation is used to motivate executives to achieve goals and objectives that support our business plan and align with the short- and long-term interests of our stockholders.

### ***Processes and Compensation Decisions***

The Compensation Committee is responsible for developing and maintaining compensation programs for our executive officers, including our named executive officers. The Compensation Committee regularly reviews our compensation practices to assess — in light of current market conditions, the status of our business and development, our financial condition and prospects — whether our existing compensation structure properly advances the near- and long-term interests of our stockholders. The Compensation Committee does not employ a compensation consultant, relying instead on its own significant experience in making executive compensation-related decisions.

In making compensation decisions with respect to each element of compensation, the Compensation Committee considers the competitive market for executives and compensation levels paid by comparable companies. The Compensation Committee from time to time reviews the compensation practices, including total compensation, at companies with which it competes for talent, including radio, television, cable, film, software development, consumer electronics and other publicly held businesses with a scope and complexity similar to ours. The Compensation Committee has not established a defined peer group against which it

benchmarks compensation. The businesses chosen for comparison may differ from one executive to the next depending on the scope and nature of the business for which the particular executive is responsible.

The Compensation Committee does not attempt to set each compensation element for each executive within a particular range related to levels provided by peers. Instead, the Compensation Committee uses market comparison as one factor in making compensation decisions. Other factors considered when making individual executive compensation decisions include individual contribution and performance, reporting structure, internal pay relationship, complexity and importance of roles and responsibilities, leadership and growth potential.

In determining compensation element levels, including the annual grants of restricted stock units and stock options, for each named executive officer (other than the Chief Executive Officer), the Compensation Committee considers the recommendations of the Chief Executive Officer.

### ***Executive Compensation Elements***

Our practices with respect to the key compensation elements identified above, as well as other elements of compensation, are described below, followed by a discussion of the specific factors considered in determining key compensation elements for the named executive officers for 2008.

#### ***Base Salary***

The objective of base salary is to reflect job responsibilities, value to us, and individual performance with respect to market competitiveness. Salaries are generally reviewed annually and are often reviewed in connection with the extension of an employment agreement.

Base salaries for named executive officers are determined in accordance with employment agreements with those officers. The minimum salaries set forth in the employment agreements and the amount of any increase over these salaries are determined by the Compensation Committee based on a variety of factors, including:

- the nature and responsibility of the position and, to the extent available, salary norms for persons in similar positions at comparable companies;
- the expertise of the individual executive;
- the executives' salary history;
- the competitiveness of the market for the executives' services; and
- the recommendations of our Chief Executive Officer (except as to his own compensation).

In setting base salaries, the Compensation Committee also considers the importance of linking a high proportion of each executive officer's compensation to performance in the form of the annual bonus as well as long-term stock-based compensation, which is tied to our stock price performance. As noted above, the Compensation Committee from time to time reviews peer data of similar executives at comparable companies, depending on the executive, in the radio, television, cable, film, software development, consumer electronics and other publicly held businesses with a scope and complexity similar to ours.

In 2008, all of the named executive officers were employed pursuant to agreements described under "Potential Payments upon Termination or Change-in-Control — Employment Agreements" below.

Mr. Karmazin's base salary of \$1,250,000 has not changed since he joined the company in 2004.

In September 2008, Ms. Dara Altman became our Executive Vice President and Chief Administrative Officer and we entered into an employment agreement with her. Ms. Altman was formerly an Executive Vice President of XM. Ms. Altman is paid a base salary of \$446,332 under the employment agreement, the same base salary she was paid in her former position with XM.

Effective February 1, 2008, Mr. Frear's base salary was increased to \$550,000 from \$525,000 to reflect the increasing scope of his responsibilities in the areas of finance and information technology, his increasing involvement in our satellite procurement program, and his contributions during 2007. Mr. Frear's base salary was further increased to \$750,000 on August 1, 2008 as part of his execution of a new employment agreement.

Effective February 1, 2008, Messrs. Greenstein, Meyer and Donnelly each received an increase in base salary consistent with prior practices and in partial recognition of their contributions in 2007. Specifically, Mr. Greenstein's base salary was increased to \$850,000 from \$800,000; Mr. Meyer's base salary was increased to \$950,000 from \$900,000; and Mr. Donnelly's base salary was increased to \$525,000 from \$500,000.

#### *Annual Bonus*

Our compensation program contemplates an annual bonus that is completely discretionary. The Compensation Committee awards bonuses to incentivize individuals to achieve goals intended to correlate closely with growth of our business and stockholder value and to compensate individuals upon the achievement of such goals. The Compensation Committee has discretion to award any annual bonuses in cash, restricted stock, restricted stock units or a combination thereof. The Compensation Committee did not establish any detailed performance objectives for the year ended December 31, 2008, but considers our performance in the exercise of its discretion.

The Compensation Committee has not yet made a decision as to whether any bonuses should be paid with respect to the year ended December 31, 2008. The Compensation Committee believed it was prudent to defer consideration of such bonuses while we worked to refinance our near term debt and improve our liquidity. The Compensation Committee may consider annual bonuses with respect to the year ended December 31, 2008 later in 2009.

#### *Long-term Incentive Compensation*

The Compensation Committee grants long-term incentive compensation to align compensation for named executive officers over a multi-year period directly with the interests of our stockholders by motivating and rewarding actions that create or increase long-term stockholder value. The Compensation Committee determines the level of long-term incentive compensation based on an evaluation of competitive factors in conjunction with total compensation provided to named executive officers and the objectives of the compensation program described above.

Our Compensation Committee grants long-term incentive compensation in the form of stock options and restricted stock units because our Compensation Committee believes that these two forms of awards reward stockholder value creation in different ways. Stock options (which have exercise prices equal to the market price on the date of grant) reward named executive officers only if our stock price increases. Restricted stock units have value on the date of grant. Restricted stock units are affected by all stock price changes, so the value to named executive officers is affected by both increases and decreases in our stock price.

Our long-term incentive program calls for stock options to be granted with exercise prices of not less than fair market value of our common stock on the date of grant and, historically, to vest proportionally over four years, if the employee is still employed by us, with exceptions to this vesting schedule made by the Compensation Committee. We define fair market value as the stock price on the close of business on the day of grant for existing employees and on the close of business the day before hiring for new employees.

The long-term compensation awarded by the Compensation Committee to named executive officers in 2008 under the programs described above is identified in the Grants of Plan-Based Awards in 2008 table. The long-term compensation awarded to Messrs. Greenstein, Meyer and Frear was intended by the Compensation Committee to have a value equal to the 2007 bonus awarded to each of the executives. The executives were awarded these long-term incentives in recognition of their contributions in 2007 and as an incentive for the executives to continue to enhance stockholder value. Mr. Donnelly did not receive a long-term incentive award because he received an award as part of the negotiation of an extended employment agreement in 2007.

Ms. Altman became an executive officer in September 2008, following our merger with XM, and did not receive a long-term incentive award from us during 2008.

As a result of the decline in the price of our common stock, none of our executive officers hold any stock options that are “in-the-money.” The Compensation Committee will consider the impact of the decline in the price of our common stock on the value of prior long-term equity-based compensation grants, when making decisions with respect to appropriate grant levels for 2009.

#### *Retirement and Other Employee Benefits*

We maintain broad-based benefits for all employees, including health and dental insurance, life and disability insurance and a 401(k) plan. Our executives are eligible to participate in all of our employee benefit plans on the same basis as other employees. Our named executive officers participate in our 401(k) Savings Plan, including the matching and profit sharing component of that plan. We did not make any contributions to the profit sharing component of our 401(k) Savings Plan with respect to the year ended December 31, 2008. We do not sponsor or maintain a retirement plan or deferred compensation plan for any of our employees.

#### *Perquisites and Other Benefits for Named Executive Officers*

The Compensation Committee supports providing perquisites and other benefits to named executive officers that are substantially the same as those offered to our other full time employees and are provided to executives in similarly situated companies.

#### *Payments to Named Executive Officers Upon Termination or Change-in-Control*

The employment agreements we have entered into with our named executive officers provide for severance payments and, in connection with a severance that occurs after a change-in-control, additional payments (including tax “gross-up” payments to protect certain named executive officers from so-called “golden parachute” excise taxes that could arise in such circumstances). These arrangements vary from executive to executive due to individual negotiations based on executive history and individual circumstances.

We believe that these severance and change-in-control arrangements mitigate some of the risk that exists for executives working in a nascent industry. These arrangements are intended to attract and retain qualified executives who could have other job alternatives that may appear to them, in the absence of these arrangements, to be less risky.

There is a possibility that we could be acquired in the future. Accordingly, we believe that severance payments in connection with a change-in-control are necessary to enable key executives to evaluate objectively the benefits to our stockholders of a proposed transaction, notwithstanding its potential effects on their own job security.

#### *Total Compensation for Named Executive Officers*

The Compensation Committee’s goal is to award compensation that is reasonable when all elements of potential compensation are considered. In making decisions with respect to any element of a named executive officer’s compensation, the Compensation Committee considers the total compensation that may be awarded to the officer, including salary, annual bonus, long-term incentives, perquisites and other benefits. In addition, the Compensation Committee considers the other benefits to which the officer is entitled by his or her employment agreement, including compensation payable upon termination of employment. In making its decisions regarding compensation for 2008, the Compensation Committee reviewed the total compensation potentially payable to, and the benefits accruing to, each named executive officer.

## **Related Policies and Considerations**

### ***Compensation of our Chief Executive Officer***

In November 2004, our board of directors negotiated, and we entered into, a five-year employment agreement with Mel Karmazin to serve as our Chief Executive Officer. The material terms of Mr. Karmazin's employment agreement are described below under "Potential Payments Upon Termination and Change-in-Control — Employment Agreements — Mel Karmazin."

The terms of Mr. Karmazin's employment were established by negotiations between Mr. Karmazin and members of our board of directors, including members of the Compensation Committee. The board of directors and the Compensation Committee did not retain an independent compensation consultant specifically to advise them in the negotiation of Mr. Karmazin's compensation arrangements or to assess the reasonableness of the compensation arrangements. Our board of directors and the Compensation Committee concluded that, in their business judgment, Mr. Karmazin's profile, qualifications and experience, particularly in radio, were uniquely suited for our needs, and that the compensation, including the base salary, stock option and restricted stock components of the compensation, was, taken as a whole, reasonable and appropriate under the circumstances.

Most of the difference in total compensation between Mr. Karmazin and our other named executive officers is attributable to the value reflected in the Summary Compensation Table for "Option Awards." As reflected in the Outstanding Equity Awards at Fiscal Year-End 2008 table on page 25, and described in footnote (1) to that table, Mr. Karmazin received a stock option award covering a substantial number of shares (as well as shares of restricted stock reflected in the Outstanding Equity Awards at Fiscal Year-End 2008 table and the Options Exercised and Stock Vested for 2008 table) in connection with the execution of his employment agreement in November 2004. Mr. Karmazin did not receive any equity-based awards in 2006, 2007 or 2008. The total compensation in the Summary Compensation Table reflects the inclusion, as noted in footnote (3) to the table, of the expense recognized solely for financial statement reporting purposes in 2006, 2007 and 2008 for option awards.

### ***Policy with Respect to Internal Revenue Code Section 162(m)***

Section 162(m) of the Internal Revenue Code places a \$1 million per person limitation on the tax deduction we may take for compensation paid to our Chief Executive Officer and our three other highest paid executive officers other than our Chief Executive Officer and Chief Financial Officer except that compensation constituting performance-based compensation, as defined by the Internal Revenue Code, is not subject to the \$1 million limit. The Compensation Committee reserves the discretion to pay compensation that does not qualify for exemption under Section 162(m) where the Compensation Committee believes such action to be in the best interests of our stockholders.

## **Compensation Committee Report**

We have reviewed and discussed the Compensation Discussion and Analysis with management and as a committee. Based on our review and discussion with management, we recommended that the board of directors include the Compensation Discussion and Analysis in this proxy statement.

Compensation Committee

LAWRENCE F. GILBERTI, *Chairman*

JAMES P. HOLDEN

JACK SHAW

JEFFREY D. ZIENTS

## Summary Compensation Table

The following table provides information concerning total compensation earned or paid to our Chief Executive Officer, our Chief Financial Officer and our four other most highly compensated executive officers who served in such capacities as of December 31, 2008 for services rendered to us during the past three fiscal years. These six officers are referred to herein as the named executive officers.

Name and Principal Position	Year	Salary (\$)	Bonus(2) (\$)	Stock Awards(3) (\$)	Option Awards(3) (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation(4) (\$)	Total (\$)
Mel Karmazin . . . . . Chief Executive Officer	2008	1,250,000	—	2,832,000	24,118,312	—	—	6,900	28,207,212
	2007	1,250,000	4,000,000	2,832,000	24,118,312	—	—	18,743	32,219,055
	2006	1,250,000	3,000,000	2,832,000	24,118,312	—	—	16,937	31,217,249
Scott A. Greenstein . . . . . President and Chief Content Officer	2008	845,834	—	233,853	1,903,228	—	—	6,900	2,989,815
	2007	791,667	440,000	1,351,441	2,439,272	—	—	17,243	5,039,623
	2006	700,000	400,000	2,817,260	3,153,839	—	—	17,145	7,088,244
James E. Meyer . . . . . President, Operations and Sales	2008	945,834	—	272,125	1,473,309	—	—	152,967	2,844,235
	2007	891,667	512,500	978,439	1,132,218	—	—	136,003	3,650,827
	2006	778,396	462,500	2,918,503	1,349,806	—	—	118,396	5,627,601
Dara F. Altman(1) . . . . . Executive Vice President and Chief Administrative Officer	2008	92,986	—	198,473	—	—	—	—	291,459
Patrick L. Donnelly . . . . . Executive Vice President, General Counsel and Secretary	2008	522,917	—	405,135	888,476	—	—	6,900	1,823,428
	2007	475,000	300,000	429,432	621,623	—	—	18,743	1,844,798
	2006	397,464	225,000	434,196	305,105	—	—	19,162	1,380,927
David J. Frear . . . . . Executive Vice President and Chief Financial Officer	2008	631,251	—	701,985	2,027,195	—	—	6,900	3,367,331
	2007	518,750	350,000	1,496,884	1,331,396	—	—	18,743	3,715,773
	2006	450,000	262,500	341,244	1,394,133	—	—	16,185	2,464,062

- (1) Information for Ms. Altman is included for the period after September 26, 2008, the date she became an employee.
- (2) The amount shown in the “Bonus” column reflects the portion of the annual bonus paid in cash in 2008 with respect to 2007 performance. Bonuses for Messrs. Greenstein, Meyer, Donnelly and Frear were paid 50% in cash and 50% in restricted stock units. The amount shown in the “Bonus” column reflects the portion of the annual bonus paid in cash in the year for which it is earned. The portion of the bonus paid in restricted stock units is reflected in the “Grants of Plan-Based Awards in 2008” table in the year granted, which will be the year following that for which the bonus was earned.
- (3) Amounts represent expense recognized for financial statement reporting purposes for the fiscal year in accordance with Statement of Financial Accounting Standards No. 123 (revised 2004), “Share-Based Payment” (“SFAS No. 123R”). The amounts exclude estimates of forfeitures relating to service-based vesting conditions on the grant date. Please refer to Note 14 of the audited consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2008 regarding assumptions underlying valuation of equity awards. These dollar amounts include amounts from awards granted in and prior to 2008.

Due to the decline in the price of our common stock, if the Stock Awards and Option Awards columns reflected the market value of our common stock as of December 31, 2008 rather than the SFAS No. 123R expense, the amounts shown in those columns would differ. These differences are reflected in the supplemental table below for each named executive officer.



### Value of Stock Awards and Option Awards v. FAS 123R Expense (supplemental table)

	Value of Stock Awards		Value of Option Awards	
	Market Value as of 12/31/08	2008 Expense as per SFAS No. 123R	Market Value as of 12/31/08	Expense as per SFAS No. 123R
Mel Karmazin . . . . .	72,000	2,832,000	—	24,118,312
James E. Meyer . . . . .	21,429	272,125	—	1,473,309
Scott A. Greenstein . . . .	18,398	233,853	—	1,903,228
Dara F. Altman . . . . .	86,112	198,473	—	—
Patrick L. Donnelly . . . .	34,544	405,135	—	888,476
David J. Frear . . . . .	50,634	701,985	—	2,027,195

Based on a closing stock price of \$0.12 on December 31, 2008. The closing price of our common stock on April 28, 2009 was \$0.39.

- (4) Represents matching and profit sharing contributions by us under our 401(k) savings plan. The profit sharing contribution was \$0 in 2008 for each of Messrs. Karmazin, Greenstein, Meyer, Donnelly and Frear. The matching contributions were paid in the form of shares of our common stock. All other compensation for Mr. Meyer also includes amounts reimbursed for temporary living and travel expenses. In 2008, Mr. Meyer was paid \$55,000 for rent, \$28,571 for travel, \$3,905 for utilities, and \$58,591 for reimbursement of taxes associated with these expenditures in accordance with his employment agreement. Travel-related expenses include airfare, taxi/car services, and other incidental travel-related costs which are reimbursed based on receipts.

### Grants of Plan-Based Awards in 2008

The following table provides information with respect to equity grants made during fiscal year 2008 to the named executive officers. Information for Ms. Altman is included for the period after September 26, 2008.

Name	Grant Date	All Other Stock Awards: Number of Shares of Stock or Units (#)(1)	All Other Option Awards: Number of Securities Underlying Options (#)(2)	Exercise or Base Price of Option Awards (\$/Sh)(3)	Grant Date Fair Value of Stock and Option Awards \$(4)
Mel Karmazin . . . . .	—	—	—	—	—
Scott A. Greenstein . . . .	1/23/2008	—	607,000	2.87	1,123,873
	1/23/2008	153,311	—	—	440,003
James E. Meyer . . . . .	1/23/2008	—	707,000	2.87	1,309,025
	1/23/2008	178,572	—	—	512,502
Dara F. Altman . . . . .	—	—	—	—	—
Patrick L. Donnelly . . . .	1/23/2008	104,530	—	—	300,001
David J. Frear . . . . .	1/23/2008	—	483,000	2.87	894,285
	1/23/2008	121,952	—	—	350,002
	2/12/2008	—	1,500,000	3.10	3,002,748
	2/12/2008	300,000	—	—	942,000

- (1) The stock awards granted on January 23, 2008 represent the portion of the 2007 annual bonus which was paid 50% in restricted stock units. These restricted stock units vested on February 20, 2009.
- (2) The stock option awards granted on January 23, 2008 vests proportionally over four years from the date of grant and have a term of ten years. The option award granted on February 12, 2008 to Mr. Frear in connection with the extension of his employment agreement vests in three equal annual installments beginning on the date of grant and has a term of ten years.
- (3) The exercise price of each option is equal to the fair market value, or closing price, of our common stock on the date of grant.
- (4) The aggregate grant date fair value of restricted stock unit and stock option awards were computed in accordance with SFAS No. 123R. The assumptions used in the valuation are discussed in Note 14 to our audited consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2008.



## Outstanding Equity Awards at Fiscal Year-End 2008

The following table provides information with respect to the status at December 31, 2008 of all unexercised options and unvested restricted stock and restricted stock units awarded to each of the named executive officers.

Name	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options (#)	Number of Securities Underlying Unexercised Options (#)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock that have not Vested (#)(6)	Market Value of Shares or Units of Stock that have not Vested (\$)(7)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights that have not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights that have not Vested (\$)
Mel Karmazin(1) . . . . .	24,000,000	6,000,000	—	4.72	11/17/2014	600,000	72,000	—	—
Scott A. Greenstein(2) . .	1,000,000	—	—	3.14	5/5/2014	153,311	18,398	—	—
	1,250,000	—	—	6.60	8/8/2015	—	—	—	—
	108,750	326,250	—	3.70	2/1/2017	—	—	—	—
	—	607,000	—	2.87	1/23/2018	—	—	—	—
James E. Meyer(3) . . . . .	50,000	—	—	6.75	12/14/2011	178,572	21,429	—	—
	66,666	—	—	1.04	8/11/2013	—	—	—	—
	675,000	675,000	—	5.54	2/2/2016	—	—	—	—
	128,000	384,000	—	3.70	2/12/2007	—	—	—	—
Dara F. Altman(4) . . . . .	—	707,000	—	2.87	1/23/2018	—	—	—	—
	—	—	—	—	—	130,331	15,640	—	—
	—	—	—	—	—	23,000	2,760	—	—
	—	—	—	—	—	92,000	11,040	—	—
	—	—	—	—	—	214,666	25,760	—	—
Patrick L. Donnelly(5) . .	—	—	—	—	—	257,600	30,912	—	—
	400,000	—	—	7.50	5/1/2011	104,530	12,544	—	—
	100,000	—	—	7.61	5/1/2011	183,334	22,000	—	—
	16,666	—	—	1.04	8/11/2013	—	—	—	—
	60,000	60,000	—	5.71	2/1/2016	—	—	—	—
	64,000	192,000	—	3.70	2/1/2017	—	—	—	—
David J. Frear(6) . . . . .	483,333	966,667	—	2.72	5/17/2017	—	—	—	—
	1,150,000	—	—	1.85	8/11/2013	121,952	14,634	—	—
	700,000	—	—	6.61	8/10/2015	300,000	36,000	—	—
	76,750	230,250	—	3.70	2/1/2017	—	—	—	—
	—	483,000	—	2.87	1/23/2018	—	—	—	—
	—	1,500,000	—	3.10	2/12/2018	—	—	—	—

- (1) Outstanding equity awards for Mr. Karmazin vest in five equal annual installments from the date of grant on November 18, 2004.
- (2) Outstanding equity awards for Mr. Greenstein vest as follows: options granted at an exercise price of \$3.14 vested immediately on the date of grant on May 5, 2004; options granted at an exercise price of \$6.60 vested in three equal annual installments from the date of grant on August 8, 2005; options granted at an exercise price of \$3.70 vest in four equal annual installments from the date of grant on February 1, 2007; options granted at an exercise price of \$2.87 vest in four equal annual installments from the date of grant on January 23, 2008; and 153,311 restricted stock units vested on February 20, 2009.
- (3) Outstanding equity awards for Mr. Meyer vest as follows: options granted at an exercise price of \$6.75 vested 50% on the date of grant on December 14, 2001 and 25% per year thereafter; options granted at an exercise price of \$1.04 vested in three equal annual installments on July 1, 2004, July 1, 2005 and July 1, 2006; options granted at an exercise price of \$5.54 vest in four equal annual installments from the date of grant on February 2, 2006; options granted at an exercise price of \$3.70 vest in four equal annual

installments from the date of grant on February 1, 2007; options granted at an exercise price of \$2.87 vest in four equal annual installments from the date of grant on January 23, 2008; and 178,572 restricted stock units vested on February 20, 2009.

- (4) Outstanding equity awards for Ms. Altman vest as follows: 130,331 restricted stock awards vested on January 3, 2009; 23,000 restricted stock awards vested on March 14, 2009; 92,000 restricted stock awards will vest on December 15, 2009; for the 214,666 restricted stock awards, 107,333 vest on May 25, 2009 and 107,333 vest on May 25, 2010; and 257,600 vest in three equal annual installments from the date of grant on May 1, 2008.
- (5) Outstanding equity awards for Mr. Donnelly vest as follows: options granted at an exercise price of \$7.50 vested 41.25% on the date of grant on May 1, 2001, 19.75% on October 15, 2001, 19.5% on April 15, 2002 and 19.5% on October 15, 2002; options granted at an exercise price of \$7.61 vested immediately on the date of grant on May 1, 2001; options granted at an exercise price of \$1.04 vested in three equal annual installments on July 1, 2004, July 1, 2005 and July 1, 2006; options granted at an exercise price of \$5.71 vest in four equal annual installments from the date of grant on February 1, 2006; options granted at an exercise price of \$3.70 vest in four equal annual installments from the date of grant on February 1, 2007; options granted at an exercise price of \$2.72 vest in three equal annual installments from the date of grant on May 17, 2007; 104,530 restricted stock units vested on February 20, 2009; and for the 183,334 restricted stock units, 91,666 vest on May 17, 2009 and 91,668 vest on May 17, 2010.
- (6) Outstanding equity awards for Mr. Frear vest as follows: options granted at an exercise price of \$1.85 vested either in three equal annual installments on July 1, 2004, July 1, 2005, and July 1, 2006, on March 15, 2004 as a result of the satisfaction of performance targets for the year ended December 31, 2003, or on March 15, 2005 as a result of the satisfaction of performance targets for the year ended December 31, 2004; options granted at an exercise price of \$6.61 vested in three equal annual installments from the date of grant on August 10, 2005; options granted at an exercise price of \$3.70 vest in four equal annual installments from the date of grant on February 1, 2007; options granted at an exercise price of \$2.87 vest in four equal annual installments from the date of grant on January 23, 2008; options granted at an exercise price of \$3.10 vest in three equal annual installments from the date of grant on February 12, 2008; 300,000 restricted stock units vest in three equal annual installments from the date of grant on February 12, 2008; and 121,952 restricted stock units vested on February 20, 2009.
- (7) Vesting and payment of all restricted stock units reflected above will be accelerated upon the death of the executive officer or upon a triggering event following a change in control, as defined under our stock incentive plans, or upon the occurrence of an event that triggers immediate vesting of the outstanding awards under the executive's employment agreement.
- (8) Amount is based on the closing price of our common stock of \$0.12 on December 31, 2008.

### Option Exercises and Stock Vested in 2008

The following table provides information with respect to option exercises and restricted stock and restricted stock units that vested during 2008.

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)
Mel Karmazin . . . . .	—	—	600,000	138,000
Scott A. Greenstein . . . . .	—	—	108,109	335,138
James E. Meyer . . . . .	—	—	125,000	387,500
Dara F. Altman (1) . . . . .	—	—	92,000	13,175
Patrick L. Donnelly . . . . .	—	—	152,477	437,846
David J. Frear . . . . .	—	—	370,946	1,038,933

- (1) Information for Ms. Altman is included for the period after September 26, 2008, the date she became an employee.

## **Non-Qualified Deferred Compensation and Pension Benefits**

We do not offer non-qualified deferred compensation or pension benefits to our named executive officers.

## **Potential Payments Upon Termination or Change-in-Control**

### ***Employment Agreements***

We have entered into an employment agreement with each of our named executive officers, which contain provisions regarding payments upon a termination or change of control.

#### ***Mel Karmazin***

In November 2004, we entered into a five-year agreement with Mel Karmazin to serve as our Chief Executive Officer. We pay Mr. Karmazin an annual salary of \$1,250,000, and annual bonuses in an amount determined each year by the Compensation Committee of our board of directors.

Pursuant to our agreement with Mr. Karmazin, his stock options and shares of restricted stock will vest upon his death or disability and in the event of a change in control. In the event Mr. Karmazin's employment is terminated by us without cause, or by Mr. Karmazin for good reason, his unvested stock options and shares of restricted stock will vest and become exercisable, and he will receive his current base salary for the remainder of the term, any earned but unpaid annual bonus, a pro rata portion of his target bonus for the year in which the termination occurs (if established) and medical and life insurance benefits for the remainder of the term.

In the event that any payment we make, or benefit we provide, to Mr. Karmazin would require him to pay an excise tax under Section 280G of the Internal Revenue Code, we have agreed to pay Mr. Karmazin the amount of such tax and such additional amount as may be necessary to place him in the exact same financial position that he would have been in if the excise tax was not imposed.

#### ***Scott A. Greenstein***

Mr. Greenstein has agreed to serve as our President and Chief Content Officer, through July 2009. We pay Mr. Greenstein an annual salary of \$850,000, and annual bonuses in an amount determined each year by the Compensation Committee of our board of directors.

If Mr. Greenstein's employment is terminated without cause or he terminates his employment for good reason, he is entitled to receive a lump sum payment equal to (1) his base salary in effect from the termination date through July 2009 and (2) any annual bonuses, at a level equal to 60% of his base salary, that would have been customarily paid during the period from the termination date through July 2009. In the event Mr. Greenstein's employment is terminated without cause or he terminates his employment for good reason, we are also obligated to continue his medical and dental benefits for 18 months following his termination and life insurance benefits for the remainder of the term.

If, following the occurrence of a change in control, Mr. Greenstein is terminated without cause or he terminates his employment for good reason, we are obligated to pay Mr. Greenstein the lesser of (1) four times his base salary and (2) 80% of the multiple of base salary, if any, that our Chief Executive Officer would be entitled to receive under his or her employment agreement if he or she was terminated without cause or terminated for good reason following such change in control. We are also obligated to continue Mr. Greenstein's medical, dental and life insurance benefits, or pay him an amount sufficient to replace these benefits, until the third anniversary of his termination date.

In the event that any payment we make, or benefit we provide, to Mr. Greenstein would require him to pay an excise tax under Section 280G of the Internal Revenue Code, we have agreed to pay Mr. Greenstein the amount of such tax and such additional amount as may be necessary to place him in the exact same financial position that he would have been in if the excise tax was not imposed.

*James E. Meyer*

Mr. Meyer has agreed to serve as our President, Operations and Sales, until April 2010. We pay Mr. Meyer an annual salary of \$950,000, and annual bonuses in an amount determined each year by the Compensation Committee of our board of directors.

In the event Mr. Meyer's employment is terminated without cause or he terminates his employment for good reason after July 28, 2009, we will pay him a lump sum payment equal to (1) his annual base salary in effect on the termination date plus, (2) the greater of (x) a bonus equal to 60% of his annual base salary or (y) the prior year's annual bonus actually paid to him (the "Designated Amount"). Pursuant to his employment agreement, Mr. Meyer may elect to retire in April 2010. In the event he elects to retire, we have agreed to pay him a lump sum payment equal to the Designated Amount. In the event Mr. Meyer's employment is terminated without cause or he terminates his employment for good reason, we are also obligated to continue his medical and dental insurance benefits for 18 months following his termination and to continue his life insurance benefits for twelve months following his termination. If Mr. Meyer's employment is terminated due to a scheduled retirement, we are obligated to continue his medical, dental and life insurance benefits for 12 months following his termination.

If Mr. Meyer is terminated without cause or he terminates his employment for good reason prior to July 28, 2009, we will pay him a lump sum payment equal to two times the Designated Amount. In such event, we are also obligated to continue his medical, dental and life insurance benefits for 24 months following his termination.

Upon the expiration of Mr. Meyer's employment agreement in April 2010 or following his retirement, we have agreed to offer Mr. Meyer a one-year consulting agreement. We expect to reimburse Mr. Meyer for all of his reasonable out-of-pocket expenses associated with the performance of his obligations under this consulting agreement, but do not expect to pay him any cash compensation. Mr. Meyer's stock options will continue to vest and will be exercisable during the term of this consulting agreement.

In the event that any payment we make, or benefit we provide, to Mr. Meyer would require him to pay an excise tax under Section 280G of the Internal Revenue Code, we have agreed to pay Mr. Meyer the amount of such tax and such additional amount as may be necessary to place him in the exact same financial position that he would have been in if the excise tax were not imposed.

*Dara F. Altman*

On September 26, 2008, we entered into a three year employment agreement with Dara F. Altman to serve as our Executive Vice President and Chief Administrative Officer. We pay Ms. Altman an annual salary of \$446,332, and annual bonuses in an amount determined each year by the Compensation Committee of our board of directors.

If Ms. Altman's employment is terminated without cause or she terminates her employment for good reason, she is entitled to receive (1) a lump sum severance payment in cash equal to two times the sum of (a) her base salary as in effect immediately prior to the termination date or, if higher, in effect immediately prior to the first occurrence of an event or circumstance constituting good reason, and (b) the higher of (x) the last annual bonus actually paid to her and (y) 55% of her base salary as in effect immediately prior to the termination date or, if higher, in effect immediately prior to the first occurrence of an event or circumstance constituting good reason, (2) a pro rata portion of her contingent cash incentive compensation awards, (3) outplacement services for two years following her termination of employment, and (4) continued medical, dental and disability insurance benefits for two years following her termination of employment. In addition, in such event, all of Ms. Altman's stock options and restricted stock units will vest and become exercisable.

In the event that any payment we make, or benefit we provide, to Ms. Altman would require her to pay an excise tax under Section 280G of the Internal Revenue Code, we have agreed to pay Ms. Altman the amount of such tax and any additional amount as may be necessary to place her in the exact same financial position that she would have been in if the excise tax was not imposed.

*Patrick L. Donnelly*

Mr. Donnelly has agreed to serve as our Executive Vice President, General Counsel and Secretary, through April 2010. We pay Mr. Donnelly an annual base salary of \$525,000, and annual bonuses in an amount determined each year by the Compensation Committee of our board of directors.

If Mr. Donnelly's employment is terminated without cause or he terminates his employment for good reason, we are obligated to pay him a lump sum payment equal to his annual salary and the annual bonus last paid to him and to continue his medical and life insurance benefits for one year.

In the event that any payment we make, or benefit we provide, to Mr. Donnelly would require him to pay an excise tax under Section 280G of the Internal Revenue Code, we have agreed to pay Mr. Donnelly the amount of such tax and such additional amount as may be necessary to place him in the exact same financial position that he would have been in if the excise tax was not imposed.

*David J. Frear*

Mr. Frear has agreed to serve as our Executive Vice President and Chief Financial Officer through July 2011. We pay Mr. Frear an annual salary of \$750,000, and annual bonuses in an amount determined each year by the Compensation Committee of our board of directors.

If Mr. Frear's employment is terminated without cause or he terminates his employment for good reason, we are obligated to pay him a lump sum payment equal to his annual salary and the annual bonus last paid to him and to continue his medical and life insurance benefits for one year.

In the event that any payment we make, or benefit we provide, to Mr. Frear would require him to pay an excise tax under Section 280G of the Internal Revenue Code, we have agreed to pay Mr. Frear the amount of such tax and such additional amount as may be necessary to place him in the exact same financial position that he would have been in if the excise tax was not imposed.

***Potential Payments***

If a triggering event and/or termination of employment had occurred as of December 31, 2008, we estimate that the value of the benefits under the employment agreements would have been as follows:

<u>Name</u>	<u>Conditions for Payouts</u>	<u>Lump Sum Severance Payment (\$)</u>	<u>Accelerated Equity Vesting(1) (\$)</u>	<u>Continuation of Insurance Benefits(2) (\$)</u>	<u>Tax Gross-Up (\$)</u>	<u>Total (\$)</u>
Mel Karmazin . . . . .	Upon change-in-control or upon termination due to death or disability	—	72,000	—	—	72,000
	Termination without cause or for good reason	1,107,955	72,000	10,319	—	1,190,274
Scott A. Greenstein . . .	Termination without cause or for good reason	1,005,833	—	25,837	—	1,031,670
	If following the occurrence of a change-in-control, termination without cause or for good reason	602,684	18,397	65,559	—	686,640
James E. Meyer . . . . .	Termination without cause, for good reason or for scheduled retirement	1,975,000	—	25,237(3)	—	2,000,237
	If following the occurrence of a change-in-control (other than a result of the XM-Sirius merger), termination without cause or for good reason	1,975,000	21,429	25,237	—	2,021,666
Dara F. Altman . . . . .	Termination without cause or for good reason	1,383,628	86,112	46,975	—	1,516,715

Name	Conditions for Payouts	Lump Sum Severance Payment (\$)	Accelerated Equity Vesting(1) (\$)	Continuation of Insurance Benefits(2) (\$)	Tax Gross-Up (\$)	Total (\$)
Patrick L. Donnelly . . .	Termination without cause or for good reason	1,125,000	—	15,806	—	1,140,806
	If following the occurrence of a change-in-control, termination without cause or for good reason	1,125,000	34,544	15,806	—	1,175,350
David J. Frear . . . . .	Termination without cause or for good reason	1,450,000	—	15,806	—	1,465,806
	If following the occurrence of a change-in-control, termination without cause or for good reason	1,450,000	50,634	15,806	—	1,516,440

- (1) Assumes that unvested equity would vest upon a change-in-control as stated in our stock incentive plans. Amounts were calculated based on the closing price of our common stock on December 31, 2008 of \$0.12. The accelerated vesting of options is valued at (a) the difference between the closing price and the exercise price of the options times (b) the number of shares of common stock underlying the options. The accelerated vesting of restricted stock and restricted stock units is valued at the closing price times the number of shares of restricted stock and restricted stock units.
- (2) Assumes that medical and dental benefits would be continued under COBRA for up to 18 months at current rates; thereafter assumes rate of two times current employer costs. Assumes that life insurance would be continued at rate of two times current employer cost.
- (3) If Mr. Meyer's employment terminates due to a scheduled retirement, then continuation of insurance benefits cost is estimated to be \$17,225, instead of \$25,237.

### Director Compensation Table for 2008

The following table provides compensation information for the year ended December 31, 2008 for each of our non-employee directors. Directors who are employees do not receive compensation for their services as directors. Ms. Amble and Messrs. Hartenstein, Huber, Mendel, Parsons, Shaw and Zients joined our board of directors on July 28, 2008. Their compensation below is for payments following that date:

Name	Fee Earned or Paid in Cash (\$)	Stock Awards(1)(2) (\$)	Option Awards(1)(3) (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value of Non-Qualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
Joan L. Amble . . . . .	20,000	—	746	—	—	—	20,746
Leon D. Black . . . . .	12,500	—	42,506	—	—	—	55,006
Lawrence F. Gilberti . . . . .	70,000	—	42,506	—	—	—	112,506
Eddy W. Hartenstein . . . . .	12,500	—	746	—	—	—	13,246
James P. Holden . . . . .	60,000	—	42,506	—	—	—	102,506
Chester A. Huber, Jr. . . . .	—	—	—	—	—	—	—
John W. Mendel . . . . .	—	—	—	—	—	—	—
James F. Mooney . . . . .	80,000	—	42,506	—	—	—	122,506
Jack Shaw . . . . .	12,500	—	746	—	—	—	13,246
Jeffrey D. Zients . . . . .	12,500	—	746	—	—	—	13,246

- (1) Amounts represent expense recognized for financial statement reporting purposes for the fiscal year ended December 31, 2008 in accordance with SFAS No. 123R, disregarding estimates of forfeitures related to service-based vesting conditions. Please refer to Note 14 of the audited consolidated financial statements in our



Annual Report on Form 10-K for the year ended December 31, 2008 regarding assumptions underlying valuation of equity awards. These dollar amounts include amounts from awards granted in or prior to 2008.

- (2) Directors were not awarded restricted stock units in 2008. At December 31, 2008, the aggregate number of unvested restricted stock units outstanding for each director was as follows: Ms. Amble — 0; Mr. Black — 47,425; Mr. Gilberti — 140,672; Mr. Hartenstein — 0; Mr. Holden — 140,672; Mr. Huber — 0; Mr. Mendel — 0; Mr. Mooney — 92,070; Mr. Shaw — 0; and Mr. Zients — 0. The directors acquired the restricted stock units held by them as part of our former director compensation program. These restricted stock units will vest on the first anniversary of the date the person ceases to be a director.
- (3) Directors, other than Messrs. Huber and Mendel, were each awarded 850,237 options at an exercise price of \$0.14 per share in 2008 with a grant date fair value of \$75,313. At December 31, 2008, the aggregate number of option awards outstanding for each director is as follows: Ms. Amble — 942,237; Mr. Black — 949,650; Mr. Gilberti — 964,650; Mr. Hartenstein — 988,237; Mr. Holden — 989,650; Mr. Huber — 0; Mr. Mendel — 0; Mr. Mooney — 949,650; Mr. Shaw — 1,157,319; and Mr. Zients — 942,237.

Mr. Huber and Mr. Mendel, who are employees of General Motors and American Honda, respectively, have elected to forgo all compensation paid to directors.

Each other member of our board of directors receives a cash annual retainer and equity compensation payable in the following manner:

- \$50,000 in cash; and
- \$70,000 in the form of options to purchase our common stock which are granted the business day following each year's annual meeting of stockholders. All options to purchase common stock awarded to our directors vest over a four-year period, with 25% vesting on each anniversary of the date of grant; provided that no options vest in a given year if, in the prior calendar year, the director failed to attend at least 75% of the meetings of the board.

Any director who fails to attend at least 75% of the meetings of the board of directors in any given year, forfeits 25% of his or her compensation that is payable in cash. During 2008, all of our directors, other than Leon Black, attended over 75% of the meetings of our board of directors.

Each director who serves as chair of a committee of the board of directors receives an additional annual cash retainer as follows: the audit committee chairwoman receives \$30,000; the compensation committee chairman receives \$20,000; and the nominating and corporate governance chairman receives \$10,000.

We also pay reasonable travel and accommodation expenses of directors in connection with their participation in meetings of the board of directors.

Prior to the merger with XM in July 2008, Joseph P. Clayton was the chairman of our board of directors. We provide Mr. Clayton medical, dental, vision, and life insurance benefits. In 2008, Mr. Clayton did not receive any compensation for serving on our board of directors.

Gary M. Parsons is now the chairman of our board of directors. Mr. Parsons has an employment agreement with our subsidiary, XM, which extends until November 18, 2009. Mr. Parsons generally participates in the same executive compensation plans and arrangements available to our other senior executives. His compensation consists of annual base salary, annual bonus and long-term equity-linked compensation. His employment agreement calls for Mr. Parsons to receive a base salary of at least \$525,000 annually, subject to increase by the board of directors of XM. The target amount of Mr. Parsons' discretionary bonus ranges from 100-125% of his base salary.



## **Item 1 — Election of Directors**

Twelve directors will be elected at the annual meeting. The current size of our board of directors is fifteen. The Nominating and Corporate Governance Committee of our board of directors has nominated twelve directors to be elected as Common Stock Directors by the holders of our common stock and our Series A Convertible Preferred Stock (the “Common Stock Director Nominees”). Gregory B. Maffei, John C. Malone and David J.A. Flowers have been appointed to the board of directors by an affiliate of Liberty Media Corporation, the holder of our Series B-1 Preferred Stock, and are referred to as the Preferred Stock Director Designees.

Set forth below are the twelve Common Stock Director Nominees to be elected by the holders of our common stock and our Series A Convertible Preferred Stock to serve until the next annual meeting of stockholders or until their respective successors have been duly elected and qualified and the three Preferred Stock Director Designees that will serve until their respective successors have been duly elected and qualified pursuant to the Certificate of Designations for the Series B-1 Preferred Stock.

To be elected as a director, each Common Stock Director Nominee must receive a plurality of the votes cast by the holders of our common stock and our Series A Convertible Preferred Stock, voting together as a single class.

Should any Common Stock Director Nominee become unable or unwilling to accept nomination or election, the proxy holders may vote the proxies for the election, in his or her stead, of any other person our board of directors may nominate or designate. Each Common Stock Director Nominee has expressed his or her intention to serve.

### **Common Stock Director Nominees**

**Joan L. Amble**, age 55, has been a director since July 2008. From December 2006 until the closing of the merger with XM in July 2008, Ms. Amble served as a director of XM Satellite Radio Holdings Inc. Ms. Amble has served as Executive Vice President and Corporate Comptroller for American Express Company since December 2003. Prior to joining American Express, Ms. Amble served as chief operating officer and chief financial officer of GE Capital Markets, a service business within GE Capital Services, Inc., overseeing securitizations, debt placement and syndication, as well as structured equity transactions. From 1994 to March 2003, Ms. Amble served as vice president and controller for GE Capital.

**Leon D. Black**, age 57, has been a director since June 2001. Mr. Black is the Chairman of the Board and Chief Executive Officer of Apollo Global Management, LLC and a Managing Partner of Apollo Management, L.P. which he founded in 1990 to manage investment capital on behalf of a group of institutional investors, focusing on corporate restructuring, leveraged buyouts, and taking minority positions in growth-oriented companies. From 1977 to 1990, Mr. Black worked at Drexel Burnham Lambert Incorporated, where he served as managing director, head of the Mergers & Acquisitions Group and co-head of the Corporate Finance Department. Mr. Black serves on the board of the general partner of AP Alternative Assets. Mr. Black is a trustee of Dartmouth College, The Museum of Modern Art, Mount Sinai Hospital, The Metropolitan Museum of Art, Prep for Prep, and the Asia Society. He is also a member of The Council on Foreign Relations, The Partnership for New York City and the National Advisory Board of JPMorganChase. He is also a member of the boards of directors of Faster Cures and the Port Authority Task Force.

**Lawrence F. Gilberti**, age 58, has been a director since September 1993. Since June 2000, Mr. Gilberti has been a partner in the law firm of Reed Smith LLP; from May 1998 through May 2000, he was of counsel to that firm. From August 1994 to May 1998, Mr. Gilberti was a partner in the law firm of Fischbein Badillo Wagner Harding.

**Eddy W. Hartenstein**, age 58, has been a director since July 2008. From May 2005 until the closing of the merger with XM in July 2008, Mr. Hartenstein served as a director of XM Satellite Radio Holdings Inc. In August 2008, Mr. Hartenstein was named Publisher and CEO of the Los Angeles Times. Mr. Hartenstein was the Vice Chairman and a member of the board of directors of The DIRECTV Group, Inc. (formerly Hughes Electronics Corporation) from December 2003 until his retirement in December 2004. Mr. Hartenstein served as Chairman and CEO of DIRECTV, Inc. from late 2001 to 2004 and as President of DIRECTV, Inc. from its

inception in 1990 to 2001. Prior to 1990, Mr. Hartenstein served in various capacities for Hughes Communications, Inc., Equatorial Communications Services Company and Hughes Communications. Mr. Hartenstein also serves as a member of the board of directors of SanDisk Corporation, The City of Hope and Broadcom, Inc.

**James P. Holden**, age 57, has been a director since August 2001. From October 1999 until November 2000, Mr. Holden was the President and Chief Executive Officer of DaimlerChrysler Corporation, one of the world's largest automakers. Prior to being appointed President in 1999, Mr. Holden held numerous senior positions within Chrysler Corporation during his 19-year career at the company. Since March 2007, Mr. Holden has been the Non-Executive Chairman of Meridian Automotive, a privately held auto supply company. Mr. Holden is a director of Speedway MotorSports, Inc. and Lead Director of Snap-On Incorporated.

**Chester A. Huber, Jr.**, age 54, has been a director since July 2008. From January 2002 until the closing of the merger with XM in July 2008, Mr. Huber served as a director of XM Satellite Radio Holdings Inc. Mr. Huber was named President of OnStar Corporation in December 1999 and was General Manager of the OnStar Division of General Motors Corporation from June 1995 until December 1999. He has held a variety of engineering, operations and marketing roles in his 34-year career with General Motors, including General Director of Aftermarket Parts and Services, and General Director of Sales, Marketing and Product Support for the Electro-Motive Division. Mr. Huber recently served on a Federal Advisory Committee for the Centers for Disease Control (CDC) and currently serves on another on the Global Positioning System (GPS) convened by NASA.

**Mel Karmazin**, age 65, has served as our Chief Executive Officer and a member of our board of directors since November 2004. Prior to joining us, Mr. Karmazin was President and Chief Operating Officer and a member of the board of directors of Viacom Inc. from May 2000 until June 2004. Prior to joining Viacom, Mr. Karmazin was President and Chief Executive Officer of CBS Corporation from January 1999 and a director of CBS Corporation from 1997 until its merger with Viacom in May 2000. He was President and Chief Operating Officer of CBS Corporation from April 1998 through December 1998. Mr. Karmazin joined CBS Corporation in December 1996 as Chairman and Chief Executive Officer of CBS Radio and served as Chairman and Chief Executive Officer of the CBS Station Group (Radio and Television) from May 1997 to April 1998. Prior to joining CBS Corporation, Mr. Karmazin served as President and Chief Executive Officer of Infinity Broadcasting Corporation from 1981 until its acquisition by CBS Corporation in December 1996. Mr. Karmazin served as Chairman, President and Chief Executive Officer of Infinity from December 1998 until the merger of Infinity Broadcasting Corporation with Viacom in February 2001.

**John W. Mendel**, age 54, has been a director since July 2008. From May 2005 until the closing of the merger with XM in July 2008, Mr. Mendel served as a director of XM Satellite Radio Holdings Inc. Mr. Mendel is Executive Vice President, automobile operations of American Honda Motor Co., Inc., responsible for Product Planning, Advertising, Marketing, Public Relations and Distribution for both Honda and Acura Automobile Divisions. Prior to joining American Honda in December 2004, Mr. Mendel served as Executive Vice President and Chief Operating Officer for Mazda North American Operations from January 2002 until November 2004. From 1976 to 2002, Mr. Mendel held numerous sales and marketing and management positions within Ford and Lincoln Mercury Divisions, Ford Customer Service and Ford of Europe.

**James F. Mooney**, age 54, has been a director since July 2003. Since March 2003, Mr. Mooney has been a director and chairman of the board of directors of Virgin Media Inc., a U.K. entertainment and communications business. From December 2004 to December 2007, Mr. Mooney was the chairman of the board of directors of RCN Corporation, a provider of bundled telephone, cable and high speed internet services. From April 2001 to September 2002, Mr. Mooney was the Executive Vice President and Chief Operating Officer of Nextel Communications Inc., a provider of wireless communications services. From January 2000 to January 2001, Mr. Mooney was the Chief Executive Officer and Chief Operating Officer of Tradeout Inc., an asset management firm owned jointly by General Electric Capital, Ebay Inc. and Benchmark Capital. From March 1999 to January 2000, Mr. Mooney was the Chief Financial Officer/Chief Operating Officer at Baan Company, a business management software provider. From 1980 until 1999, Mr. Mooney held a number of positions with IBM Corporation, including Chief Financial Officer of the Americas.

**Gary M. Parsons**, age 58, has served as our Chairman of the Board of Directors since July 2008. From May 1997 until the closing of the merger with XM in July 2008, Mr. Parsons served as Chairman of the Board of Directors of XM Satellite Radio Holdings Inc. and previously served as its Chief Executive Officer. He serves on the board of Canadian Satellite Radio Holdings Inc. and Devas Multimedia Pvt. Ltd, and is Chairman and was previously Chief Executive Officer of SkyTerra L.P. Mr. Parsons was President and Chief Executive Officer of TerraStar Corporation, formerly Motient Corporation, from July 1996 to March 1998, and subsequently served as Chairman until May 2002. Previously, Mr. Parsons was with MCI Communications Corporation where he served in a variety of roles from 1990 to 1996, including Executive Vice President of MCI Communications, and as Chief Executive Officer of MCI's subsidiary MCImetro, Inc. From 1984 to 1990, Mr. Parsons was one of the principals of Telecom\*USA, which was acquired by MCI.

**Jack Shaw**, age 70, has been a director since July 2008. From May 1997 until the closing of the merger with XM in July 2008, Mr. Shaw served as a director of XM Satellite Radio Holdings Inc. Mr. Shaw served as Chief Executive Officer of Hughes Electronics Corporation from January 2000 until his retirement in December 2003 and served as Chief Executive Officer and Chairman of Hughes Network Systems, Inc. from 1987 and 1988, respectively, through January 2000. Previously, Mr. Shaw held senior management positions with companies including ITT Space Communications, Inc., Digital Communications Corporation and M/A-Com Telecommunications, Inc., which was acquired by Hughes Electronics Corporation in 1987. Mr. Shaw is a member of the Board of Directors of Globecom Systems, Inc.

**Jeffrey D. Zients**, age 42, has been a director since July 2008. From May 2006 until the closing of the merger with XM in July 2008, Mr. Zients served as a director of XM Satellite Radio Holdings Inc. Mr. Zients leads an investment company that focuses on public and private small-cap companies. Mr. Zients serves as Chairman of the Board of PSA Healthcare, a pediatric home healthcare provider. He also served as the Chairman of the Board of The Advisory Board Company and Chairman of the Board of The Corporate Executive Board Company, two business-to-business content companies from June 2001 to November 2004 and January 2000 to April 2001, respectively. From July 1998 to June 2001, he served as Chief Executive Officer and from 1996 to July 1998 he served as Chief Operating Officer of The Advisory Board Company. Mr. Zients currently serves as a member of the Board of Directors for Best Practices, a provider of emergency medicine outsourcing services, and Timbuk2 Designs, a messenger bag and apparel retailer.

**The board of directors unanimously recommends a vote “FOR” each of the Common Stock Director Nominees.**

#### **Preferred Stock Director Designees**

**Gregory B. Maffei**, age 48, has been a director since March 2009. Mr. Maffei has been the Chief Executive Officer and President of Liberty Media Corporation since February 2006 and a director of Liberty Media Corporation since November 2005. Mr. Maffei served as CEO-Elect of Liberty Media Corporation from November 2005 through February 2006. Mr. Maffei served as President and CFO of Oracle Corporation from June 2005 until November 2005. Mr. Maffei served as Chairman and Chief Executive Officer of 360networks from January 2000 until June 2005. Previously he served as CFO of Microsoft and Chairman of Expedia. Mr. Maffei is also a director of DirecTV Group, Inc. and Electronics Arts, Inc.

**John C. Malone**, age 68, has been a director since April 2009. Mr. Malone has been Chairman of the Board and a director of Liberty Media Corporation since March 2006. Prior to that, Mr. Malone was Chairman of the Board and a director of Liberty Media LLC, the predecessor of Liberty Media Corporation, from 1994 to May 2006. He was Chief Executive Officer of Liberty Media LLC from August 2005 to February 2006. Mr. Malone served as Chairman of the Board of Telecommunications, Inc., or TCI, from November 1996 to March 1999; and Chief Executive Officer of TCI from January 1994 to March 1997. Mr. Malone is Chairman of the Board of Liberty Global, Inc., Chairman of the Board of DirecTV Group, Inc. and a director of Discovery Communications, Inc., IAC/InterActiveCorp, and Expedia, Inc.

**David J.A. Flowers**, age 54, has been a director since April 2009. Mr. Flowers has been a Senior Vice President and the Treasurer of Liberty Media Corporation since March 2006. Prior to that, he was a Senior Vice President of Liberty Media LLC, the predecessor of Liberty Media Corporation, since October 2000 and

Treasurer of Liberty Media LLC since April 1997. Mr. Flowers served as a Vice President of Liberty Media LLC from June 1995 to October 2000. Mr. Flowers also serves as a director of Internal Leisure Group, Inc.

**Item 2 — *Amendment to Our Certificate of Incorporation to Increase the Number of Authorized Shares of Our Common Stock from 8,000,000,000 to 9,000,000,000 Shares.***

Our board of directors has approved, and is hereby soliciting stockholder approval of, an amendment to our certificate of incorporation to increase the number of authorized shares of our common stock from 8,000,000,000 shares to 9,000,000,000 shares in the form set forth in Appendix A to this proxy statement (the “Share Increase Amendment”).

We currently have 8,000,000,000 shares of our common stock authorized for issuance. On the record date, we had outstanding approximately 3.856 billion shares of our common stock, approximately 2.6 billion shares of our common stock were issuable upon conversion of our preferred stock, and approximately 650 million shares of our common stock were issuable based on convertible debt instruments, warrants, options and other stock-based awards. Our board of directors believes that the availability of additional authorized shares will provide us with the flexibility in the future to issue shares of our common stock for general corporate purposes, such as raising additional capital and settling outstanding obligations, acquisitions of companies or assets and sales of stock or securities convertible into or exercisable for common stock. We believe that this will provide us with additional flexibility to meet business and financing needs as they arise.

Our board of directors will determine whether, when and on what terms the issuance of shares of our common stock may be warranted in connection with any future actions. No further action or authorization by our stockholders will be necessary before issuance of the additional shares of our common stock authorized under our certificate of incorporation, except as may be required for a particular transaction by applicable law or regulatory agencies or by the rules of the Nasdaq or any other stock market or exchange on which our common stock may then be listed.

The additional shares of common stock, if issued, would have the same rights and privileges as the shares of common stock now issued. Any issuance of additional shares of common stock would increase the number of outstanding shares of common stock and (unless such issuance was pro-rata among existing stockholders) the percentage ownership of existing stockholders would be diluted accordingly.

To the extent we are unable to refinance our debt at maturity on attractive terms, we may choose to issue shares of common stock in satisfaction thereof. From June 2009 through December 2010, approximately \$512.3 million of our debt and our subsidiaries’ debt is due to mature.

Although an increase in the authorized shares of our common stock could, under certain circumstances, also be construed as having an anti-takeover effect (for example, by permitting easier dilution of the stock ownership of a person seeking to effect a change in the composition of the board of directors or contemplating a tender offer or other transaction resulting in our acquisition by another company), the proposed increase in shares authorized is not in response to any effort by any person or group to accumulate our common stock or to obtain control of us by any means. In addition, the proposal is not part of any plan by our board of directors to recommend or implement a series of anti-takeover measures.

The proposed increase in the authorized shares of our common stock would become effective immediately upon the filing of the Share Increase Amendment with the office of the Secretary of State of the State of Delaware. We expect to file the Share Increase Amendment in this Item 2 with the Secretary of State of the State of Delaware promptly upon approval by our stockholders and in any event prior to effecting any reverse stock split and share decrease authorized by Item 3.

The affirmative vote of the holders of a majority of voting power of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, and of holders of a majority of the voting power of our common stock, voting as a separate class, will be required to approve the Share Increase Amendment. Approval by stockholders of this Item 2 is not conditioned upon approval of Item 3; conversely, approval by stockholders of Item 3 is not conditioned upon approval of this Item 2.

**The board of directors unanimously recommends a vote “FOR” the proposal to amend our certificate of incorporation to increase the number of authorized shares of our common stock from 8,000,000,000 to 9,000,000,000 shares.**

**Item 3 — *Amendment to Our Certificate of Incorporation to Effect a Reverse Stock Split and to Reduce the Number of Authorized Shares of Our Common Stock.***

**General**

Our board of directors has approved, and is hereby soliciting stockholder approval of, an amendment to our certificate of incorporation to effect a reverse stock split at a ratio of not less than one-for-ten and not more than one-for-fifty in the form set forth in Appendix B, to this proxy statement (the “Reverse Stock Split Amendment”).

Our stockholders approved an amendment to our certificate of incorporation at our 2008 annual meeting of stockholders held on December 18, 2008 to authorize an amendment to our certificate of incorporation to effect a reverse stock split, increase the number of authorized shares under our certificate of incorporation following a reverse stock split, and provide for certain other actions described herein. Approval of this amendment to our certificate of incorporation would extend previous authority to effect a reverse stock split to June 30, 2010 from December 31, 2009. If stockholders approve this Item 3, this approval will supersede the approval we received to amend our certificate of incorporation to effect a reverse stock split at our 2008 annual meeting of stockholders on December 18, 2008.

A vote FOR this Item 3 will constitute approval of the Reverse Stock Split Amendment providing for the combination of any whole number of shares of common stock between and including ten and fifty into one share of common stock and will grant our board of directors the authority to select which of the approved exchange ratios within that range will be implemented. If stockholders approve this proposal, our board of directors will have the authority, but not the obligation, in its sole discretion and without further action on the part of the stockholders, to select one of the approved reverse stock split ratios and effect the approved reverse stock split by filing the Reverse Stock Split Amendment with the Secretary of State of the State of Delaware at any time after the approval of the Reverse Stock Split Amendment. If the Reverse Stock Split Amendment has not been filed with the Secretary of State of the State of Delaware by the close of business on June 30, 2010, the board of directors will have no authority to effectuate the Reverse Stock Split Amendment. If the reverse stock split is implemented, the Reverse Stock Split Amendment also would reduce the number of authorized shares of our common stock as set forth below but would not change the par value of a share of our common stock. Except for any changes as a result of the treatment of fractional shares, each stockholder will hold the same percentage of common stock outstanding immediately prior to the reverse stock split as such stockholder held immediately prior to the reverse stock split.

Our board of directors believes that stockholder approval of an exchange ratio range (rather than an exact exchange ratio) provides the board with maximum flexibility to achieve the purposes of the reverse stock split. If the stockholders approve this Item 3, the reverse stock split will be effected, if at all, only upon a determination by the board of directors that the reverse stock split is in the company’s and the stockholders’ best interests at that time. In connection with any determination to effect the reverse stock split, the board of directors will set the time for such a split and select a specific ratio within the range. These determinations will be made by the board of directors with the intention to create the greatest marketability for our common stock based upon prevailing market conditions at that time.

The board of directors reserves its right to elect to abandon the reverse stock split if it determines, in its sole discretion, that this proposal is no longer in the best interests of the company and its stockholders.

**Purpose of the Reverse Stock Split Amendment**

Our common stock currently trades on the Nasdaq Global Select Market under the symbol “SIRI”. The Nasdaq Global Select Market has several continued listing criteria that companies must satisfy in order to remain listed on the exchange. One of these criteria is that a company’s common stock have a trading price that is greater than or equal to \$1.00 per share. While Nasdaq has temporarily suspended the \$1.00 per share



minimum bid requirement until July 19, 2009, we believe that it is in the best interests of the company and our stockholders to give the board the flexibility to meet these requirements if and when Nasdaq resumes enforcement. September 19, 2008 is the last day our common stock traded above \$1.00 per share. If the price of our common stock closes below the minimum \$1.00 per share required for continued listing by Nasdaq for thirty consecutive business days following the end of the temporary suspension, Nasdaq will notify us and provide us an initial period of 180 calendar days to regain compliance. Currently, we meet all of the Nasdaq Global Select Market's continued listing criteria, other than the minimum trading price requirement. We believe that approval of this proposal would significantly reduce our risk of not meeting this continued listing standard in the future.

The purpose of the reverse stock split is to increase the per share trading value of our common stock. Our board of directors intends to effect the proposed reverse stock split only if it believes that a decrease in the number of shares outstanding is likely to improve the trading price for our common stock, and only if the implementation of a reverse stock split is determined by the board of directors to be in the best interests of the company and its stockholders. Our board of directors may exercise its discretion not to implement a reverse stock split.

### **Impact of the Reverse Stock Split Amendment if Implemented**

If approved and effected, the reverse stock split will be realized simultaneously and in the same ratio for all of our common stock. The reverse stock split will affect all holders of our common stock uniformly and will not affect any stockholder's percentage ownership interest in the company. As described below, holders of common stock otherwise entitled to a fractional share as a result of the reverse stock split will receive a cash payment in lieu of such fractional share. These cash payments will reduce the number of post-reverse stock split holders of our common stock to the extent there are concurrently stockholders who would otherwise receive less than one share of common stock after the reverse stock split. In addition, the reverse stock split will not affect any stockholder's proportionate voting power (subject to the treatment of fractional shares).

The principal effects of the Reverse Stock Split Amendment will be that:

- depending on the ratio for the reverse stock split selected by our board of directors, each ten or fifty shares of common stock owned by a stockholder, or any whole number of shares of common stock between ten and fifty as determined by the board of directors, will be combined into one new share of common stock;
- the number of shares of common stock issued and outstanding (including the shares issuable upon conversion of our preferred stock) will be reduced from approximately 6.5 billion shares to a range of approximately 646 million shares to 129 million shares, depending upon the reverse stock split ratio selected by the board of directors;
- the number of authorized shares of common stock will be reduced from 8 billion (or, if the proposal to increase the number of authorized shares of common stock set forth in Item 2 is approved, 9 billion) to a range of approximately 1.3 billion to 400 million dependent on the reverse stock split ratio chosen by the board of directors. The table below illustrates the number of authorized shares of common stock that will correspond to each range of reverse stock split ratios:

<u>Range of Reverse Stock Split Ratios</u>	<u>Total Authorized Shares of Common Stock after Reverse Stock Split</u>
One-for-ten to one-for-nineteen . . . . .	1,300,000,000
One-for-twenty to one-for-twenty-nine . . . . .	700,000,000
One-for-thirty to one-for-thirty-nine . . . . .	500,000,000
One-for-forty to one-for-fifty . . . . .	400,000,000

- because the number of issued and outstanding shares of common stock will decrease as result of the reverse stock split, the number of authorized but unissued shares of common stock may increase on a relative basis. These additional shares of authorized common stock would be available for issuance at the discretion of our board of directors from time to time for corporate purposes such as raising

additional capital and settling outstanding obligations, acquisitions of companies or assets and sales of stock or securities convertible into or exercisable for common stock. We believe that the availability of the additional shares would provide us with additional flexibility to meet business and financing needs as they arise;

- based upon the reverse stock split ratio selected by our board of directors, proportionate adjustments will be made to the per share exercise price and/or the number of shares issuable upon the exercise or conversion of all outstanding options, restricted stock awards, restricted stock units, warrants, convertible or exchangeable securities entitling the holders to purchase, exchange for, or convert into, shares of common stock, which will result in approximately the same aggregate price being required to be paid for such options and restricted stock awards and units upon exercise immediately preceding the reverse stock split; and
- the number of shares reserved for issuance or pursuant to the securities or plans described in the immediately preceding bullet will be reduced proportionately based upon the reverse stock split ratio selected by our board of directors.

The table below illustrates the effect, as of March 31, 2009, of a reverse stock split at certain ratios on (i) the shares of common stock outstanding and reserved for issuance, (ii) the reduced number of total authorized shares of common stock under our certificate of incorporation, and (iii) the resulting number of shares of common stock available for issuance:

	<b>Shares of Common Stock Outstanding plus Shares of Common Stock Reserved for Issuance</b>	<b>Total Authorized Shares of Common Stock</b>	<b>Shares of Common Stock Available for Issuance (% of total authorized)</b>
One-for-ten stock split is approved. . . .	711,805,722	1,300,000,000	588,194,278(45.25%)
One-for-twenty stock split is approved . .	355,902,861	700,000,000	344,097,139(49.16%)
One-for-thirty stock split is approved . . .	237,268,574	500,000,000	262,731,426(52.55%)
One-for-forty stock split is approved . . .	177,951,430	400,000,000	222,048,570(55.51%)
One-for-fifty stock split is approved . . . .	142,361,144	400,000,000	257,638,856(64.14%)

#### **Certain Risks Associated with the Reverse Stock Split**

- If the reverse stock split is effected and the market price of our common stock declines, the percentage decline may be greater than would occur in the absence of a reverse stock split. The market price of our common stock will, however, also be based on performance and other factors, which are unrelated to the number of shares outstanding.
- There can be no assurance that the reverse stock split will result in any particular price for our common stock. As a result, the trading liquidity of our common stock may not necessarily improve.
- To the extent we are unable to refinance our debt at maturity on attractive terms, we may choose to issue shares of common stock in satisfaction thereof. From June 2009 through December 2010, approximately \$512.3 million of our debt and our subsidiaries' debt is due to mature.
- There can be no assurance that the market price per share of our common stock after a reverse stock split will increase in proportion to the reduction in the number of shares of our common stock outstanding before the reverse stock split. For example, based on the closing price of our common stock on April 28, 2009 of \$0.39 per share, if the reverse stock split were implemented and approved for a reverse stock split ratio of one-for-twenty, there can be no assurance that the post-split market price of our common stock would be \$7.80 or greater. Accordingly, the total market capitalization of our common stock after the reverse stock split may be lower than the total market capitalization before the reverse stock split. Moreover, in the future, the market price of our common stock following the reverse stock split may not exceed or remain higher than the market price prior to the reverse stock split.



- Because the number of issued and outstanding shares of common stock would decrease as result of the reverse stock split, the number of authorized but unissued shares of common stock would increase on a relative basis. If we issue additional shares of common stock, the ownership interest of our current stockholders would be diluted, possibly substantially.
- The proportion of unissued authorized shares to issued shares could, under certain circumstances, have an anti-takeover effect. For example, the issuance of a large block of common stock could dilute the stock ownership of a person seeking to effect a change in the composition of the board of directors or contemplating a tender offer or other transaction for the combination of the company with another company.
- The reverse stock split may result in some stockholders owning “odd lots” of less than 100 shares of common stock. Odd lot shares may be more difficult to sell, and brokerage commissions and other costs of transactions in odd lots are generally somewhat higher than the costs of transactions in “round lots” of even multiples of 100 shares.

Our board of directors intends to effect the reverse stock split only if it believes that a decrease in the number of shares is likely to improve the trading price of our common stock and if the implementation of the reverse stock split is determined by the board of directors to be in the best interests of the company and its stockholders.

### **Effective Time**

The proposed reverse stock split would become effective as of 11:59 p.m., Eastern Time, (the “Effective Time”) on the date of filing the Reverse Stock Split Amendment with the office of the Secretary of State of the State of Delaware. Except as explained below with respect to fractional shares, on the Effective Time, shares of our common stock issued and outstanding immediately prior thereto will be combined, automatically and without any action on the part of the stockholders, into one share of our common stock in accordance with the reverse stock split ratio determined by our board of directors. We expect to file the Share Increase Amendment authorized by Item 2 with the Secretary of State of the State of Delaware promptly upon approval by our stockholders and in any event prior to effecting any stock split and share decrease authorized by this Item 3. Approval by stockholders of this Item 3 is not conditioned upon approval of Item 2; conversely, approval by stockholders of Item 2 is not conditioned upon approval of this Item 3.

After the Effective Time, our common stock will each have new committee on uniform securities identification procedures (“CUSIP”) numbers, which is a number used to identify our equity securities, and stock certificates with the older CUSIP numbers will need to be exchanged for stock certificates with the new CUSIP numbers by following the procedures described below.

After the Effective Time, we will continue to be subject to periodic reporting and other requirements of the Exchange Act. Our common stock will continue to be listed on the Nasdaq Global Select Market under the symbol “SIRI”, although Nasdaq will add the letter “D” to the end of the trading symbol for a period of 20 trading days after the Effective Date to indicate that the reverse stock split has occurred.

### **Board Discretion to Implement the Reverse Stock Split Amendment**

If the reverse stock split is approved by our stockholders, it will be effected, if at all, only upon a determination by our board of directors that a reverse stock split (at a ratio determined by the board of directors as described above) is in the best interests of the company and the stockholders. The board of director’s determination as to whether the reverse stock split will be effected and, if so, at what ratio, will be based upon certain factors, including existing and expected marketability and liquidity of our common stock, prevailing market conditions and the likely effect on the market price of our common stock. If our board of directors determines to effect the reverse stock split, the board of directors will consider various factors in selecting the ratio including the overall market conditions at the time and the recent trading history of the common stock.

## **Fractional Shares**

Stockholders will not receive fractional post-reverse stock split shares in connection with the reverse stock split. Instead, our transfer agent for the registered stockholders will aggregate all fractional shares and arrange for them to be sold as soon as practicable after the Effective Time at the then prevailing prices on the open market on behalf of those stockholders who would otherwise be entitled to receive a fractional share. We expect that the transfer agent will cause the sale to be conducted in an orderly fashion at a reasonable pace and that it may take several days to sell all of the aggregated fractional shares of common stock. After completing the sale, stockholders will receive a cash payment from the transfer agent in an amount equal to the stockholder's pro rata share of the total net proceeds of these sales. No transaction costs will be assessed on the sale. However, the proceeds will be subject to certain taxes as discussed below. In addition, stockholders will not be entitled to receive interest for the period of time between the Effective Time and the date a stockholder receives payment for the cashed-out shares. The payment amount will be paid to the stockholder in the form of a check in accordance with the procedures outlined below.

After the reverse stock split, a stockholder will have no further interest in the company with respect to their cashed-out fractional shares. A person otherwise entitled to a fractional interest will not have any voting, dividend or other rights except to receive payment as described above.

## **Effect on Beneficial Holders of Common Stock (i.e., stockholders who hold in "street name")**

Upon the reverse stock split, we intend to treat shares held by stockholders in "street name," through a bank, broker or other nominee, in the same manner as registered stockholders whose shares are registered in their names. Banks, brokers or other nominees will be instructed to effect the reverse stock split for their beneficial holders holding our common stock in "street name". However, these banks, brokers or other nominees may have different procedures than registered stockholders for processing the reverse stock split and making payment for fractional shares. If a stockholder holds shares of our common stock with a bank, broker or other nominee and has any questions in this regard, stockholders are encouraged to contact their bank, broker or other nominee.

## **Effect on Registered "Book-Entry" Holders of Common Stock (i.e. stockholders that are registered on the transfer agent's books and records but do not hold stock certificates)**

Certain of our registered holders of common stock may hold some or all of their shares electronically in book-entry form with the transfer agent. These stockholders do not have stock certificates evidencing their ownership of the common stock. They are, however, provided with a statement reflecting the number of shares registered in their accounts.

If a stockholder holds registered shares in book-entry form with the transfer agent, no action needs to be taken to receive post-reverse stock split shares or cash payment in lieu of any fractional share interest, if applicable. If a stockholder is entitled to post-reverse stock split shares, a transaction statement will automatically be sent to the stockholder's address of record indicating the number of shares of common stock held following the reverse stock split.

If a stockholder is entitled to a payment in lieu of any fractional share interest, a check will be mailed to the stockholder's registered address as soon as practicable after the Effective Time. By signing and cashing the check, stockholders will warrant that they owned the shares of common stock for which they received a cash payment. The cash payment is subject to applicable federal and state income tax and state abandoned property laws. In addition, stockholders will not be entitled to receive interest for the period of time between the Effective Time of the reverse stock split and the date payment is received.

## **Effect on Certificated Shares**

Stockholders holding shares of our common stock in certificate form will be sent a transmittal letter by the transfer agent after the Effective Time. The letter of transmittal will contain instructions on how a stockholder should surrender his or her certificate(s) representing shares of our common stock ("Old

Certificates”) to the transfer agent in exchange for certificates representing the appropriate number of whole shares of post-reverse stock split common stock (“New Certificates”). No New Certificates will be issued to a stockholder until such stockholder has surrendered all Old Certificates, together with a properly completed and executed letter of transmittal, to the transfer agent. No stockholder will be required to pay a transfer or other fee to exchange his, her or its Old Certificates.

Stockholders will then receive a New Certificate(s) representing the number of whole shares of common stock which they are entitled as a result of the reverse stock split. Until surrendered, we will deem outstanding Old Certificates held by stockholders to be cancelled and only to represent the number of whole shares of post-reverse stock split common stock to which these stockholders are entitled.

Any Old Certificates submitted for exchange, whether because of a sale, transfer or other disposition of stock, will automatically be exchanged for new certificates. If an Old Certificate has a restrictive legend on the back of the Old Certificate(s), the New Certificate will be issued with the same restrictive legends that are on the back of the Old Certificate(s).

If a stockholder is entitled to a payment in lieu of any fractional share interest, such payment will be made as described above under “Fractional Shares”.

**Stockholders should not destroy any stock certificate(s) and should not submit any stock certificate(s) until requested to do so.**

### **Accounting Matters**

The reverse stock split will not affect the par value of a share of our common stock. As a result, as of the Effective Time of the reverse stock split, the stated capital attributable to common stock on our balance sheet will be reduced proportionately based on the reverse stock split ratio (including a retroactive adjustment of prior periods), and the additional paid-in capital account will be credited with the amount by which the stated capital is reduced. Reported per share net income or loss will be higher because there will be fewer shares of common stock outstanding.

### **No Appraisal Rights**

Under the Delaware General Corporation Law, stockholders are not entitled to appraisal rights with respect to the reverse stock split, and we will not independently provide stockholders with any such right.

### **Certain United States Federal Income Tax Considerations**

The following is a summary of certain U.S. federal income tax consequences of the reverse stock split to holders of our common stock. This discussion is based upon the Code, Treasury regulations, judicial authorities, published positions of the Internal Revenue Service (the “IRS”) and other applicable authorities, all as currently in effect and all of which are subject to change or differing interpretations (possibly with retroactive effect). This discussion is limited to U.S. holders (as defined below) that hold their shares of our common stock as capital assets for U.S. federal income tax purposes (generally, assets held for investment). This discussion does not address all of the tax consequences that may be relevant to a particular stockholder or to stockholders that are subject to special treatment under U.S. federal income tax laws, such as:

- stockholders that are not U.S. holders;
- financial institutions;
- insurance companies;
- tax-exempt organizations;
- dealers in securities or currencies;
- persons whose functional currency is not the U.S. dollar;
- traders in securities that elect to use a mark to market method of accounting;

- persons who own more than 5% of our outstanding stock;
- persons that hold our common stock as part of a straddle, hedge, constructive sale or conversion transaction; and
- U.S. holders who acquired their shares of our common stock through the exercise of an employee stock option or otherwise as compensation.

If a partnership or other entity taxed as a partnership holds our common stock, the tax treatment of a partner in the partnership generally will depend upon the status of the partner and the activities of the partnership. Partnerships and partners in such a partnership should consult their tax advisers about the tax consequences of the reverse stock split to them.

This discussion does not address the tax consequences of the reverse stock split under state, local or foreign tax laws. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences set forth below.

**Holders of our common stock are urged to consult with their own tax advisors as to the tax consequences of the reverse stock split in their particular circumstances, including the applicability and effect of the alternative minimum tax and any state, local or foreign and other tax laws and of changes in those laws.**

For purposes of this section, the term “U.S. holder” means a beneficial owner of our common stock that for U.S. federal income tax purposes is:

- a citizen or resident of the United States;
- a corporation, or other entity treated as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States or any State or the District of Columbia;
- an estate that is subject to U.S. federal income tax on its income regardless of its source; or
- a trust, the substantial decisions of which are controlled by one or more U.S. persons and which is subject to the primary supervision of a U.S. court, or a trust that validly has elected under applicable Treasury regulations to be treated as a U.S. person for U.S. federal income tax purposes.

### ***Tax Consequences of the Reverse Stock Split Generally***

**Except as provided below with respect to cash received in lieu of fractional shares, a U.S. holder will not recognize any gain or loss as a result of the reverse stock split.**

### ***Cash received in lieu of fractional shares***

A U.S. holder that receives cash in lieu of a fractional share of common stock in the reverse stock split will generally be treated as having received such fractional share and then as having received such cash in redemption of such fractional share interest. A U.S. holder generally will recognize gain or loss measured by the difference between the amount of cash received and the portion of the basis of the pre-reverse stock split common stock allocable to such fractional interest. Such gain or loss generally will constitute capital gain or loss and will be long-term capital gain or loss if the U.S. holder’s holding period in our common stock exchanged therefore was greater than one year as of the date of the exchange.

### ***Tax Basis and Holding Period***

A U.S. holder’s aggregate tax basis in the common stock received in the reverse stock split will equal such stockholder’s aggregate tax basis in our common stock surrendered in the reverse stock split reduced by any amount allocable to a fractional share of post-reverse stock split common stock for which cash is received. The holding period for the shares of our common stock received in the reverse stock split generally will include the holding period for the shares of our common stock exchanged therefor.

### ***Required Vote and Recommendation***

The affirmative vote of the holders of a majority of the voting power of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, and of holders of a majority of the voting power of our common stock, voting as a separate class, will be required to approve the Reverse Stock Split Amendment. Approval by stockholders of this Item 3 is not conditioned upon approval of Item 2; conversely, approval by stockholders of Item 2 is not conditioned upon approval of this Item 3.

**The board of directors unanimously recommends a vote “FOR” the proposal to amend our certificate of incorporation to effect a reverse stock split at a ratio of not less than one-for-ten and not more than one-for-fifty any time prior to June 30, 2010, with the exact ratio to be determined by our board of directors and to reduce the number of authorized shares as set forth in Item 3 above.**

### ***Item 4 — Approval of the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan***

Our board of directors has adopted the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan (referred to herein as the “Plan”), subject to the approval of our stockholders. If the Plan is approved by our stockholders, no future equity awards will be made pursuant to the Amended and Restated Sirius Satellite Radio 2003 Long-Term Incentive Plan, the XM Satellite Radio Holdings Inc. 2007 Stock Incentive Plan and the XM Satellite Radio Holdings Inc. Talent Option Plan (collectively, the “Predecessor Plans”). The Plan, if approved, will expire in 2019.

### **Summary of the Plan**

Set forth below is a summary of the principal features of the Plan. This summary is qualified in its entirety by reference to the terms of the Plan, a copy of which is included in this proxy statement as Appendix C.

#### ***Purpose***

The Plan authorizes our board of directors, or a committee designated by our board of directors and made up of two or more non-employee directors, to provide equity-based compensation for the purpose of attracting and retaining directors, employees and consultants and providing our directors, employees and consultants incentives and rewards for superior performance.

The Plan is designed to comply with the requirements of applicable federal and state securities laws, and the Internal Revenue Code of 1986, as amended (the “Code”), including the performance-based exclusion from the deduction limitations under Section 162(m) of the Code.

The Plan permits the granting of (i) stock options, including incentive stock options (“ISOs”) entitling the optionee to favorable tax treatment under Section 422 of the Code, (ii) stock appreciation rights (“SARs”), (iii) restricted stock, (iv) restricted stock units (“RSUs”), (v) performance awards, and (vi) other awards valued in whole or in part by reference to or otherwise based on our common stock (“Other Stock-Based Awards”). Each type of award is described below under “Types of Awards Under the Plan.” Each of the awards will be evidenced by an award document setting forth the terms and conditions.

#### ***Shares Subject to the Plan***

Our board of directors has authorized the issuance of 600 million shares of our common stock (less than 10% of the total shares of our common stock outstanding, calculated on a fully-diluted basis) in connection with awards pursuant to the Plan. No more than 120 million of those shares are available for the exercise of ISOs. The number of shares with respect to options and SARs that may be granted under the Plan to any individual participant in any single fiscal year during the term of the Plan may not exceed 120 million shares, and the maximum number of shares that may be paid to any individual participant in connection with awards intended to qualify as “performance-based compensation” under Section 162(m) of the Code in respect of a single performance period may not exceed 120 million.

### ***Plan Administration***

The Plan is administered by a committee designated by our board of directors and made up of two or more non-employee directors (the “Committee”). The Committee may select eligible employees to whom awards are granted, determine the types of awards to be granted and the number of shares covered by awards and set the terms and conditions of awards. The Committee’s determinations and interpretations under the Plan will be binding on all interested parties. The Committee may delegate to officers (or, in the case of awards of shares, our board of directors may delegate to a committee made up of one or more directors) certain authority with respect to the granting of awards other than awards to executive officers and directors.

### ***Eligibility***

Awards may be made by the Committee to any of our employees or consultants, or to employees or consultants of our affiliates, or non-employee directors who are members of our board of directors or the board of directors of our affiliates; *provided* that ISOs may only be granted to our employees or employees of our affiliates. Currently, there are approximately 1,500 individuals whom we believe would be eligible to participate in the Plan subject to any necessary approvals by the Committee.

### ***No Liberal Recycling Provisions***

The Plan provides that only shares covering awards that expire or are forfeited or cancelled, or shares that were covered by an award the benefit of which is paid in cash instead of shares, will again be available for issuance under the Plan. The following shares will not be added back to the aggregate Plan limit: (i) shares tendered in payment of the option price; and (ii) shares withheld by us to satisfy the tax withholding obligation. Further, all shares covered by a SAR, to the extent that it is exercised and settled in shares, and whether or not shares are actually issued to the participant upon exercise of the right, will be considered issued or transferred pursuant to the Plan.

### ***No Repricing***

Repricing of options and SARs is prohibited without stockholder approval under the Plan.

### ***Types of Awards Under the Plan***

***Stock Options.*** Option rights may be granted that entitle the optionee to purchase shares of our common stock at a price not less than fair market value at the date of grant, and may be ISOs, nonqualified stock options, or combinations of the two. Stock options granted under the Plan will be subject to such terms and conditions, including exercise price and conditions and timing of exercise, as may be determined by the Committee and specified in the applicable award agreement. Payment in respect of the exercise of an option granted under the Plan may be made in cash or its equivalent, or (i) by exchanging shares owned by the optionee (which are not the subject of any pledge or other security interest and which have been owned by such optionee for at least six months), (ii) subject to such rules as may be established by the Committee, either through delivery of irrevocable instructions to a broker to sell the shares being acquired upon exercise of the option and to deliver promptly to us an amount equal to the aggregate exercise price and/or by having us withhold from shares otherwise deliverable an amount equal to the aggregate option exercise price, or by a combination of the foregoing, *provided* that the combined value of all cash and cash equivalents and the fair market value of such shares so tendered to us as of the date of such tender is at least equal to the aggregate exercise price of the option. No stock option may be exercisable more than 10 years from the date of grant.

***Stock Appreciation Rights.*** SARs granted under the Plan will be subject to such terms and conditions, including grant price and the conditions and limitations applicable to exercise thereof, as may be determined by the Committee and specified in the applicable award agreement. SARs may be granted in tandem with another award, in addition to another award, or freestanding and unrelated to another award. A SAR will entitle the participant to receive an amount equal to the excess of the fair market value of a share on the date of exercise of the SAR over the grant price thereof (which may not be less than fair market value on the date of grant). The Committee, in its sole discretion, will determine whether a SAR will be settled in cash, shares



or a combination of cash and shares. No SAR may be exercisable more than 10 years from the date of grant. At the discretion of the Committee, SARs may, but need not be, intended to qualify as performance-based compensation.

*Restricted Stock and Restricted Stock Units.* Restricted stock and RSUs granted under the Plan will be subject to such terms and conditions, including the duration of the period during which, and the conditions, if any, under which, the restricted stock and restricted stock units may be forfeited to us, as may be determined by the Committee in its sole discretion. Each RSU will have a value equal to the fair market value of a share of our common stock. RSUs will be paid in cash, shares, other securities or other property, as determined by the Committee in its sole discretion, upon the lapse of the restrictions applicable thereto, or otherwise in accordance with the applicable award agreement.

*Performance Awards.* Performance awards granted under the Plan will consist of a right which is (i) denominated in cash or shares, (ii) valued, as determined by the Committee, in accordance with the achievement of such performance goals during such performance periods as the Committee will establish, and (iii) payable at such time and in such form as the Committee will determine. Subject to the terms of the Plan and any applicable award agreement, the Committee will determine the performance goals to be achieved during any performance period, the length of any performance period, the amount of any performance award and the amount and kind of any payment or transfer to be made pursuant to any performance award. Performance awards may be paid in a lump sum or in installments following the close of the performance period (as set forth in the applicable award agreement) or, in accordance with procedures established by the Committee, on a deferred basis.

*Other Stock-Based Awards.* In addition to the foregoing types of awards, the Committee will have authority to grant to participants an “other stock-based award” (as defined in the Plan), which will consist of any right which is (i) not a stock option, SAR, restricted stock or RSU or performance award and (ii) an award of shares or an award denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, shares of our common stock (including, without limitation, securities convertible into shares of our common stock), as deemed by the Committee to be consistent with the purposes of the Plan; *provided* that any such rights must comply, to the extent deemed desirable by the Committee, with Rule 16b-3 and applicable law. Subject to the terms of the Plan and any applicable award agreement, the Committee will determine the terms and conditions of any such other stock-based award, including the price, if any, at which securities may be purchased pursuant to any other stock-based award granted under the Plan.

*Dividend Equivalents.* In the sole discretion of the Committee, an award (other than options or SARs), whether made as another stock-based award or as any other type of award issuable under the Plan, may provide the participant with the right to receive dividends or dividend equivalents, payable in cash, shares, other securities or other property and on a current or deferred basis.

### ***Performance Criteria***

The Plan requires that the Committee establish “Performance Criteria” for purposes of any award under the Plan that is intended to qualify as “performance-based compensation” under Section 162(m) of the Code. The Performance Criteria that will be used to establish the performance goal(s) will be based on the attainment by us of specific levels of performance (or by one or more of our affiliates, divisions or operational units) and will be limited to the following: return on net assets, return on stockholders’ equity, return on assets, return on capital, revenue, average revenue per subscriber, stockholder returns, profit margin, earnings per Share, net earnings, operating earnings, free cash flow, earnings before interest, taxes, depreciation and amortization, number of subscribers, growth of subscribers, operating expenses, capital expenses, subscriber acquisition costs, share price, enterprise value, equity market capitalization or sales or market share. To the extent required under Section 162(m) of the Code, the Committee will, within the first 90 days of a performance period (or, if

longer, within the maximum period allowed under Section 162(m) of the Code), define in an objective fashion the manner of calculating the Performance Criteria it selects to use for such performance period.

### ***Amendments***

Our board of directors may amend the Plan from time to time without further approval by our stockholders, except where (i) the amendment would materially increase the benefits accruing to participants under the Plan, (ii) the amendment would materially increase the number of securities which may be issued under the Plan, (iii) the amendment would materially modify the requirements for participation in the Plan, or (iv) stockholder approval is required by applicable law or Nasdaq rules and regulations, and *provided* that no such action that would adversely affect the rights of any participant with respect to awards previously granted under the Plan will be effective without the participant's consent.

### ***Transferability***

Each award, and each right under any award, will be exercisable only by the participant during the participant's lifetime, or, if permissible under applicable law, by the participant's guardian or legal representative, and no award may be sold, assigned, pledged, attached, alienated or otherwise transferred or encumbered by a participant, other than by will or by the laws of descent and distribution, and any such purported sale, assignment, pledge, attachment, alienation, transfer or encumbrance will be void and unenforceable against us or any affiliate; *provided* that the designation of a beneficiary will not constitute a sale, assignment, pledge, attachment, alienation, transfer or encumbrance.

### ***Adjustments***

The number and kind of shares covered by outstanding awards under the Plan and, if applicable, the prices per share applicable thereto, are subject to adjustment in the event of dividend or other distribution (whether in the form of cash, shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of shares or other securities of ours, issuance of warrants or other rights to purchase our shares or other securities, or other corporate transaction or event. In the event of any such transaction, the Committee may, in its discretion, adjust to prevent dilution or enlargement of benefits (i) the number of our shares or other securities (or number and kind of other securities or property) with respect to which awards may be granted, (ii) the number of our shares or other securities of (or number and kind of other securities or property) subject to outstanding awards, and (iii) the grant or exercise price with respect to any award or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding award in consideration for the cancellation of such award, which, in the case of options and SARs will equal the excess, if any, of the fair market value of the shares subject to such options or SARs over the aggregate exercise price or grant price of such options or SARs.

### ***Change of Control***

Unless otherwise provided in an award agreement, if there is a change of control of us (as defined in the Plan) and the resulting entity assumes, converts or replaces the outstanding awards under the Plan, any management objectives will be deemed to have been satisfied at target as of the date of the change of control and the awards will become fully vested upon the participant's involuntary termination of employment without cause, or resignation with good reason for certain employees, during the two year period immediately following the change of control. On the other hand, if the resulting entity does not assume, convert or replace awards outstanding under the Plan, the awards will become fully vested and no longer be subject to any restrictions, and any management objectives will be deemed to have been satisfied at target, upon the change of control.

### ***Withholding Taxes***

A participant may be required to pay to us, and we will have the right and are authorized to withhold from any award, from any payment due or transfer made under any award or under the Plan or from any

compensation or other amount owing to a participant the amount (in cash, shares, other securities, other awards or other property) of any applicable withholding taxes in respect of an award, its exercise, or any payment or transfer under an award or under the Plan and to take such other action as may be necessary in our opinion to satisfy all obligations for the payment of such taxes. A participant may satisfy, in whole or in part, the withholding liability by delivery of shares owned by the participant (which are not subject to any pledge or other security interest and which have been owned by the participant for at least six months) with a fair market value equal to such withholding liability or by having us withhold from the number of shares otherwise issuable upon the occurrence of a vesting event a number of shares with a fair market value equal to such withholding liability.

### ***Termination***

No grant will be made under the Plan more than 10 years after the date on which the Plan is first approved by our board of directors, but all grants made on or prior to such date will continue in effect thereafter subject to the terms thereof and of the Plan.

### **Federal Income Tax Consequences Relating to Awards**

The following is a brief summary of some of the federal income tax consequences of certain transactions under the Plan based on federal income tax laws in effect on the date hereof. This summary is not intended to be complete and does not describe state or local tax consequences. It is not intended as tax guidance to participants in the plan.

#### ***Tax Consequences to Participants***

*Non-qualified Stock Options.* In general, (i) no income will be recognized by an optionee at the time a non-qualified stock option is granted; (ii) at the time of exercise of a non-qualified stock option, ordinary income will be recognized by the optionee in an amount equal to the difference between the option price paid for the shares and the fair market value of the shares, if unrestricted, on the date of exercise; and (iii) at the time of sale of shares acquired pursuant to the exercise of a non-qualified stock option, appreciation (or depreciation) in value of the shares after the date of exercise will be treated as either short-term or long-term capital gain (or loss) depending on how long the shares have been held.

*Incentive Stock Options.* No income generally will be recognized by an optionee upon the grant or exercise of an ISO. The exercise of an ISO, however, may result in alternative minimum tax liability. If shares of our common stock are issued to the optionee pursuant to the exercise of an ISO, and if no disqualifying disposition of such shares is made by such optionee within two years after the date of grant or within one year after the transfer of such shares to the optionee, then upon sale of such shares, any amount realized in excess of the option price will be taxed to the optionee as a long-term capital gain and any loss sustained will be a long-term capital loss.

If shares of our common stock acquired upon the exercise of an ISO are disposed of prior to the expiration of either holding period described above, the optionee generally will recognize ordinary income in the year of disposition in an amount equal to the excess (if any) of the fair market value of such shares at the time of exercise (or, if less, the amount realized on the disposition of such shares if a sale or exchange) over the option price paid for such shares. Any further gain (or loss) realized by the participant generally will be taxed as short-term or long-term capital gain (or loss) depending on the holding period.

*SARs.* No income will be recognized by a participant in connection with the grant of a tandem SAR or a free-standing SAR. When the SAR is exercised, the participant normally will be required to include as taxable ordinary income in the year of exercise an amount equal to the amount of cash received and the fair market value of any unrestricted shares of our common stock received on the exercise.

*Restricted Stock.* The recipient of restricted stock generally will be subject to tax at ordinary income rates on the fair market value of the restricted stock (reduced by any amount paid by the participant for such restricted stock) at such time as the shares are no longer subject to forfeiture or restrictions on transfer for

purposes of Section 83 of the Code (“Restrictions”). However, a recipient who so elects under Section 83(b) of the Code within 30 days of the date of transfer of the shares will have taxable ordinary income on the date of transfer of the shares equal to the excess of the fair market value of such shares (determined without regard to the Restrictions) over the purchase price, if any, of such restricted stock. If a Section 83(b) election has not been made, any dividends received with respect to restricted stock that is subject to the Restrictions generally will be treated as compensation that is taxable as ordinary income to the participant.

*RSUs.* No income generally will be recognized upon the award of RSUs. The recipient of a RSU award generally will be subject to tax at ordinary income rates on the fair market value of unrestricted shares of our common stock on the date that such shares are transferred to the participant under the award (reduced by any amount paid by the participant for such RSUs), and the capital gains/loss holding period for such shares will also commence on such date.

*Performance Awards.* No income generally will be recognized upon the grant of performance awards. Upon payment in respect of the earn-out of performance awards, the recipient generally will be required to include as taxable ordinary income in the year of receipt an amount equal to the amount of cash received and the fair market value of any unrestricted shares of our common stock received.

### ***Tax Consequences to Us or Our Subsidiary***

To the extent that a participant recognizes ordinary income in the circumstances described above, we or the subsidiary for which the participant performs services will be entitled to a corresponding deduction *provided* that, among other things, the income meets the test of reasonableness, is an ordinary and necessary business expense, is not an “excess parachute payment” within the meaning of Section 280G of the Code and is not disallowed by the \$1 million limitation on certain executive compensation under Section 162(m) of the Code.

### ***Compliance with Section 162(m) of the Code***

The Plan is designed to enable us to provide certain forms of performance-based compensation to executive officers that will meet the requirements for tax deductibility under Section 162(m) of the Code.

### ***Compliance with Section 409A of the Code***

To the extent applicable, it is intended that the Plan and any grants made thereunder comply with the provisions of Section 409A of the Code, so that the income inclusion provisions of Section 409A(a)(1) of the Code do not apply to the participants. The Plan and any grants made under the Plan will be administered in a manner consistent with this intent. Any reference in the Plan to Section 409A of the Code will also include any regulations or any other formal guidance promulgated with respect to such Section by the U.S. Department of the Treasury or the Internal Revenue Service.

### **Registration with the SEC**

We intend to file a Registration Statement on Form S-8 relating to the issuance of shares of our common stock under the Plan with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, as soon as is practicable after approval of the Plan by our stockholders.

### **New Plan Benefits**

Because awards to be granted in the future under the Plan are at the discretion of the Committee, it is not possible to determine the benefits or the amounts to be received under the Plan by our directors, officers or employees.

For grants made during our most recent three fiscal years under the Predecessor Plans to our named executive officers as set forth in the Grants of Plan-Based Awards table, please see page 24. Since the inception of the Predecessor Plans, no award has been granted to (i) any associate of any current director who is not an executive officer, (ii) any associate of any executive officer or (iii) any associate of any nominee for

election as a director, and the Committee has not authorized the granting to any one person of five percent or more of the total amount of awards to be granted under the Plan.

### Equity Compensation Plan Information

Compensation plans (other than qualified employee benefits plans and plans available to stockholders on a pro rata basis) under which our equity securities are authorized for issuance at December 31, 2008 are as follows:

<u>Plan Category</u> (Shares in thousands)	<u>Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights</u> (a)	<u>Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights</u> (b)	<u>Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))</u> (c)
Equity compensation plans approved by security holders . . . . .	165,436	\$4.42	160,223
Equity compensation plans not approved by security holders . . . . .	—	—	—
<b>Total</b> . . . . .	<u>165,436</u>	<u>\$4.42</u>	<u>160,223</u>

### Vote Required

The affirmative vote of a majority in voting power of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, represented in person or by proxy and entitled to vote is required for the approval of the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan.

**The board of directors unanimously recommends a vote “FOR” approval of the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan.**

### Item 5 — Ratification of Independent Registered Public Accountants

The board of directors has selected KPMG LLP (“KPMG”) as our independent registered public accountants for 2009. As such, KPMG will audit and report on our financial statements for the year ending December 31, 2009.

Representatives of KPMG are expected to be present at the annual meeting. They will have an opportunity to make a statement if they desire to do so and are expected to be available to respond to appropriate questions.

On September 23, 2008, the Audit Committee of our board of directors approved the engagement of KPMG as our independent registered public accounting firm. Since 1997, KPMG has performed the audit of XM Holdings, which became our subsidiary upon the closing of our merger on July 28, 2008. During our two most recent fiscal years and any subsequent interim period prior to the engagement of KPMG, neither we nor anyone on our behalf consulted with KPMG, regarding either (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on our financial statements or (ii) any matter that was either the subject of a “disagreement” or a “reportable event.”

Effective as of September 23, 2008, we dismissed Ernst & Young LLP as our independent auditors. This action was approved by the Audit Committee of our board of directors.

The reports of Ernst & Young on our financial statements for the fiscal years ended December 31, 2007 and 2006 did not contain an adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles.

During the years ended December 31, 2007 and 2006 and through September 23, 2008, there were no disagreements with Ernst & Young on any matter of accounting principles or practices, financial statement

disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Ernst & Young, would have caused it to make reference to the subject matter of the disagreements in connection with its report, nor were there any “reportable events” as such term is described in Item 304(a)(1)(v) of Regulation S-K, promulgated under the Securities Exchange Act of 1934, as amended.

We requested Ernst & Young to review the disclosures contained in the preceding two paragraphs and asked Ernst & Young to furnish us with a letter addressed to the SEC stating whether it agreed with those statements contained herein. We filed a copy of Ernst & Young’s letter as an exhibit to a Current Report on Form 8-K dated September 25, 2008.

**The board of directors unanimously recommends a vote “FOR” the ratification of KPMG LLP as our independent registered public accountants for 2009.**

**Item 6 — *Stockholder Proposal on advisory vote on executive compensation.***

We have been advised that Michael Hartleib (the “Proponent”) has submitted a stockholder proposal for consideration (the “Stockholder Proposal”) at the annual meeting. The Proponent’s address is 24892 Hollow Circle, Laguna Niguel, California 92677. The Proponent has represented to us that he beneficially held in excess of 100,000 shares of our common stock as of December 16, 2008. We are not responsible for the contents of the Stockholder Proposal or the accuracy thereof. Our board of directors unanimously recommends a vote “**AGAINST**” the following Stockholder Proposal.

**Stockholder Proposal**

RESOLVED, that stockholders of Sirius XM Satellite Radio urge the board of directors to adopt a policy that Sirius XM Satellite Radio stockholders be given the opportunity at each annual meeting of stockholders to vote on an advisory resolution, to be proposed by Sirius XM Satellite Radio’s management, to ratify the compensation of the named executive officers (“NEOs”) set forth in the proxy statement’s Summary Compensation Table (the “SCT”) and the accompanying narrative disclosure of material factors provided to understand the SCT (but not the Compensation Discussion and Analysis). The proposal submitted to stockholders should make clear that the vote is non-binding and would not affect any compensation paid or awarded to any NEO.

**Supporting Statement**

Investors are increasingly concerned about mushrooming executive compensation which sometimes appears to be insufficiently aligned with the creation of stockholder value. Additionally, recent media attention to questionable dating of stock options grants by companies has raised related investor concerns.

The SEC has created a new rule, with record support from investors, requiring companies to disclose additional information about compensation and perquisites for top executives. The rule has now been in effect for over a year. In establishing the rule the SEC has made it clear that it is the role of market forces, not the SEC, to provide checks and balances on compensation practices.

We believe that existing U.S. corporate governance arrangements, including SEC rules and stock exchange listing standards, do not provide stockholders with enough mechanisms for providing input to boards on senior executive compensation. In contrast to U.S. practices, in the United Kingdom, public companies allow stockholders to cast an advisory vote on the “directors’ remuneration report,” which discloses executive compensation. Such a vote isn’t binding, but gives stockholders a clear voice that could help shape senior executive compensation.

Currently, U.S. stock exchange listing standards require stockholder approval of equity-based compensation plans; those plans, however, set general parameters and accord the compensation committee substantial discretion in making awards and establishing performance thresholds for a particular year. Stockholders do not have any mechanism for providing ongoing feedback on the application of those general standards to individual pay packages. (See Lucian Bebchuk & Jesse Fried, *Pay Without Performance* 49 (2004)).

Similarly, performance criteria submitted for stockholder approval to allow a company to deduct compensation in excess of \$1 million are broad and do not constrain compensation committees in setting performance targets for particular senior executives. Withholding votes from compensation committee



members who are standing for reelection is a blunt and insufficient instrument for registering dissatisfaction with the way in which the committee has administered compensation plans and policies in the previous year.

Accordingly, we urge Sirius XM Satellite Radio's Board to allow stockholders to express their opinion about senior executive compensation at Sirius XM Satellite Radio by establishing an annual referendum process. The results of such a vote would, we think, provide Sirius XM Satellite Radio with useful information about whether stockholders view the company's senior executive compensation, as reported each year, to be in stockholders' best interests.

We urge stockholders to vote "yes" for this proposal.

### **Company Response in Opposition to the Stockholder Proposal**

The board of directors recognizes that stockholders have a valid interest in our executive compensation practices, and understands the importance of administering our executive compensation program in a manner that conforms to the highest standards of corporate governance. The board of directors has carefully considered the Stockholder Proposal, and it does not believe that the adoption of the Stockholder Proposal is in the best interests of stockholders. Accordingly, the board of directors recommends that stockholders vote **against** the Stockholder Proposal for the following reasons.

Our Compensation Committee, which consists entirely of independent directors, is responsible for maintaining a performance-based executive compensation program designed to attract, motivate and retain high-quality executives in a competitive market. As explained in greater detail under "Executive Compensation — Compensation Discussion and Analysis," our executive compensation program takes a three-part approach to best align stockholders' interests with our performance, compensating senior executives using three key elements: base salary, an annual bonus and grants of long-term, equity-based compensation. In making compensation decisions with respect to each element of compensation, our Compensation Committee considers the competitive market for executives and compensation levels paid by comparable companies. The Compensation Committee also reviews from time to time the compensation practices at companies with which we compete for talent. Other factors considered when making executive compensation decisions include individual contribution and performance, reporting structure, internal pay relationship, complexity and importance of roles and responsibilities, leadership and growth potential.

In its consideration and approval of executive compensation, the Compensation Committee makes numerous, complicated and interdependent decisions, all requiring judgment and analysis after careful review of substantial data. The board of directors believes that the Compensation Committee is in the best position to make such decisions, and that in order to continue to attract and retain executives of outstanding ability, the Compensation Committee must continue to possess the flexibility to select compensation incentives that effectively balance various considerations. The board of directors believes that an advisory resolution may negatively affect stockholder value, even if it does not directly impinge upon the Compensation Committee's ability to set compensation levels, by creating the impression among our senior executives and potential executive candidates that the Compensation Committee's flexibility to select incentives was compromised.

The board of directors believes that the information disclosed under "Executive Compensation — Compensation Discussion and Analysis" and the executive compensation tables provides a significant amount of detailed information as to how the Compensation Committee sets compensation for senior executives, and this information provides a solid foundation for an informed discussion with stockholders. The board of directors believes that an advisory resolution would not add meaningful information to these disclosures, nor would it have any legal consequence on any compensation arrangement. Unlike input we may receive directly from a stockholder, an annual, backward-looking "yes" or "no" vote on compensation practices would not provide the Compensation Committee with any useful insight into specific stockholder's concerns regarding executive compensation, nor would it provide any specific information that the Compensation Committee could use to improve our remuneration policies. On the other hand, we already have in place corporate governance policies designed to ensure that the board of directors is responsive to stockholder concerns regarding all issues, including executive compensation issues. Under these policies, any stockholder may communicate his or her dissatisfaction with our compensation practices directly to any individual on the

Compensation Committee, or to the Compensation Committee as a group, by sending an e-mail to [nonmgmtdirectors@sirius-radio.com](mailto:nonmgmtdirectors@sirius-radio.com) or by writing to any director in c/o Patrick L. Donnelly, Executive Vice President, General Counsel and Secretary, Sirius XM Radio Inc., 1221 Avenue of the Americas, New York, New York 10020.

The board of directors exercises great care in determining and disclosing executive compensation. The board of directors does not believe the advisory vote will enhance governance practices or improve communication with stockholders, nor is it in the best interest of stockholders. Instead, it may very well constrain the Compensation Committee's efforts to recruit and retain exceptional senior executives.

#### **Vote Required**

The affirmative vote of a majority in voting power of our common stock, our Series A Convertible Preferred Stock and our Series B-1 Preferred Stock, voting together as a single class, represented in person or by proxy and entitled to vote is required for the approval of this Stockholder Proposal.

#### **Recommendation of the board of directors**

**The board of directors unanimously recommends a vote "AGAINST" this Stockholder Proposal.**

## OTHER MATTERS

Our board of directors does not intend to present, or have any reason to believe others will present, any other items of business. If other matters are properly brought before the annual meeting, the persons named in the accompanying proxy will vote the shares represented by it in accordance with the recommendation of our board of directors.

By Order of the Board of Directors,

A handwritten signature in black ink, reading "Patrick L. Donnelly". The signature is written in a cursive style with a large, stylized initial "P".

Patrick L. Donnelly  
*Executive Vice President,  
General Counsel and Secretary*

New York, New York  
April 30, 2009

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**FORM OF CERTIFICATE OF AMENDMENT  
OF  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
SIRIUS XM RADIO INC.**

The undersigned officer of Sirius XM Radio Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “Corporation”), DOES HEREBY CERTIFY as follows:

FIRST: The name of the Corporation is Sirius XM Radio Inc.

SECOND: The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by changing Section (1) of the Article numbered “Fourth” so that, as amended, said Section of said Article shall be and read as follows:

“Fourth: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 9,050,000,000 shares, consisting of (1) 50,000,000 shares of preferred stock, par value \$0.001 per share (“Preferred Stock”), and (2) 9,000,000,000 shares of common stock, par value \$0.001 per share (“Common Stock”).”

THIRD: The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: The foregoing amendment shall be effective upon filing with the Secretary of State of the State of Delaware.

[Rest of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment as of this  
day of \_\_\_\_\_, 2009.

Sirius XM Radio Inc.

By: \_\_\_\_\_  
Name:  
Title:



**FORM OF CERTIFICATE OF AMENDMENT  
OF  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
SIRIUS XM RADIO INC.**

The undersigned officer of Sirius XM Radio Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “Corporation”), DOES HEREBY CERTIFY as follows:

FIRST: The name of the Corporation is Sirius XM Radio Inc.

SECOND: The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by changing Section (1) of the Article numbered “Fourth” so that, as amended, said Section of said Article shall be and read as follows:

“Fourth: The total number of shares of all classes of stock which the Corporation shall have authority to issue is [1,350,000,000] [750,000,000] [550,000,000] [450,000,000] 1 shares, consisting of (1) 50,000,000 shares of preferred stock, par value \$0.001 per share (“Preferred Stock”), and (2) [1,300,000,000] [700,000,000] [500,000,000] [400,000,000] shares of common stock, par value \$0.001 per share (“Common Stock”).

- (1) The total number of shares of all classes of stock authorized will be: 1,350,000,000 if the reverse stock split ratio determined by the board of directors is between one-for-ten and one-for-nineteen, 750,000,000 if the reverse stock split ratio determined by the board of directors is between one-for-twenty and one-for-twenty-nine, 550,000,000 if the reverse stock split ratio determined by the board of directors is between one-for-thirty and one-for-thirty-nine and 450,000,000 if the reverse stock split ratio determined by the board of directors is between one-for-forty and one-for-fifty.
- (2) The total number of shares of Common Stock authorized will be: 1,300,000,000 if the reverse stock split ratio determined by the board of directors is between one-for-ten and one-for-nineteen, 700,000,000 if the reverse stock split ratio determined by the board of directors is between one-for-twenty and one-for-twenty-nine, 500,000,000 if the reverse stock split ratio determined by the board of directors is between one-for-thirty and one-for-thirty-nine and 400,000,000 if the reverse stock split ratio determined by the board of directors is between one-for-forty and one-for-fifty.

Upon the effectiveness of the amendment to the Restated Certificate of Incorporation adding this paragraph thereto, (the “Effective Time”), the shares of Common Stock issued and outstanding immediately prior to the Effective Time (the “Old Common Stock”) are reclassified into a smaller number of shares such that each ten to fifty shares of issued Common Stock immediately prior to the Effective Time are reclassified as and combined into one share of Common Stock (the “New Common Stock”), the exact ratio within the ten to fifty range to be determined by the board of directors of the Corporation prior to the Effective Time and publicly announced by the Corporation (such combination and conversion, the “Reverse Stock Split”).

Notwithstanding the immediately preceding sentence, no fractional shares of New Common Stock shall be issued to the holders of record of Old Common Stock in connection with the foregoing reclassification of shares of Old Common Stock and the Corporation shall not recognize on its stock record books any purported transfer of any fractional share of New Common Stock. In lieu thereof, the aggregate of all fractional shares otherwise issuable to the holders of record of Old Common Stock shall be issued to BNY Mellon, the transfer agent, as agent for the accounts of all holders of record of Old Common Stock and otherwise entitled to have a fraction of a share issued to them. The sale of all of the fractional interests will be effected by the transfer agent as soon as practicable after the Effective Date on the basis of the prevailing market prices of the New Common Stock at the time of the sale. After such sale and upon the surrender of the stockholders’ stock

certificates, the transfer agent will pay to such holders of record their pro rata share of the total net proceeds derived from the sale of the fractional interests. Each stock certificate that, immediately prior to the Effective Date, represented shares of Old Common Stock shall, from and after the Effective Date, automatically and without any action on the part of the respective holders thereof, represent that number of whole shares of New Common Stock into which the shares of Old Common Stock represented by such certificate shall have been reclassified (as well as the right to receive cash in lieu of any fractional shares of New Common Stock as set forth above), provided, however, that each holder of record of a certificate that represented shares of Old Common Stock shall receive, upon surrender of such certificate, a new certificate representing the number of whole shares of New Common Stock into which the shares of Old Common Stock represented by such certificate shall have been reclassified, as well as any cash in lieu of fractional shares of New Common Stock to which such holder may be entitled as set forth above.”

THIRD: The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: The foregoing amendment shall be effective as of 11:59 p.m., Eastern Time, on the date of filing with the Secretary of State of the State of Delaware.

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IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment as of this  
day of \_\_\_\_\_, 20\_\_.

Sirius XM Radio Inc.

By: \_\_\_\_\_  
Name:  
Title:

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**SIRIUS XM RADIO INC.**  
**2009 LONG-TERM STOCK INCENTIVE PLAN**

SECTION 1. Purpose. The purposes of this Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan are to promote the interests of Sirius XM Radio Inc. and its stockholders by (i) attracting and retaining employees and directors of, and consultants to, the Company and its Affiliates, as defined below; (ii) motivating such individuals by means of performance-related incentives to achieve longer-range performance goals; and (iii) enabling such individuals to participate in the long-term growth and financial success of the Company.

SECTION 2. Definitions. As used in the Plan, the following terms shall have the meanings set forth below:

“*Affiliate*” shall mean any entity (i) that, directly or indirectly, is controlled by, controls or is under common control with, the Company or (ii) in which the Company has a significant equity interest, in either case as determined by the Committee.

“*Award*” shall mean any Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit Award, Performance Award, Other Stock-Based Award or Performance Compensation Award made or granted from time to time hereunder.

“*Award Agreement*” shall mean any written agreement, contract, or other instrument or document evidencing any Award, which may, but need not, be executed or acknowledged by a Participant.

“*Board*” shall mean the Board of Directors of the Company.

“*Cause*” as a reason for a Participant’s termination of employment or service shall have the meaning assigned such term in the employment, severance or similar agreement, if any, between the Participant and the Company or an Affiliate. If the Participant is not a party to an employment, severance or similar agreement with the Company or an Affiliate in which such term is defined, then unless otherwise defined in the applicable Award Agreement, “*Cause*” shall mean: (i) the intentional engagement in any acts or omissions constituting dishonesty, breach of a fiduciary obligation, wrongdoing or misfeasance, in each case, in connection with a Participant’s duties or otherwise during the course of a Participant’s employment or service with the Company or an Affiliate; (ii) the commission of a felony or the indictment for any felony, including, but not limited to, any felony involving fraud, embezzlement, moral turpitude or theft; (iii) the intentional and wrongful damaging of property, contractual interests or business relationships of the Company or an Affiliate; (iv) the intentional and wrongful disclosure of secret processes or confidential information of the Company or an Affiliate in violation of an agreement with or a policy of the Company or an Affiliate; (v) the continued failure to substantially perform the Participant’s duties for the Company or an Affiliate; (vi) current alcohol or prescription drug abuse affecting work performance; (vii) current illegal use of drugs; or (viii) any intentional conduct contrary to the Company’s or an Affiliate’s written policies or practices.

“*Change of Control*” shall mean the occurrence of any of the following: (i) the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company to any “person” or “group” (as such terms are used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act), (ii) any person or group is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person shall be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the voting stock of the Company, including by way of merger, consolidation or otherwise or (iii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board (together with any new directors whose election by such Board or whose nomination for election by the stockholders of the Company was approved by a vote of a majority of the directors of the Company, then still in office, who were either directors at the beginning of such period or whose election or nomination for election was previously so approved, but excluding any director whose initial assumption of office is in connection with an actual or

threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) cease for any reason to constitute a majority of the Board, then in office.

*“Code”* shall mean the Internal Revenue Code of 1986, as amended from time to time.

*“Committee”* shall mean a committee of the Board designated by the Board to administer the Plan and composed of not less than two directors, each of whom is required to be a ‘Non-Employee Director’ (within the meaning of Rule 16b-3) and an “outside director” (within the meaning of Section 162(m) of the Code) to the extent Rule 16b-3 and Section 162(m) of the Code, respectively, are applicable to the Company and the Plan. If at any time such a committee has not been so designated, the Board shall constitute the Committee.

*“Company”* shall mean Sirius XM Radio Inc., together with any successor thereto.

*“Exchange Act”* shall mean the Securities Exchange Act of 1934, as amended.

*“Existing Plans”* shall mean, collectively, the Amended and Restated Sirius Satellite Radio 2003 Long-Term Stock Incentive Plan, the XM Satellite Radio Holdings Inc. 2007 Stock Incentive Plan, and the XM Satellite Radio Holdings Inc. Talent Option Plan.

*“Fair Market Value”* shall mean (i) with respect to any property other than Shares, the fair market value of such property determined by such methods or procedures as shall be established from time to time by the Committee and (ii) with respect to the Shares, as of any date, (1) the closing sale price (excluding any “after hours” trading) of the Shares as reported on the Nasdaq Stock Market for such date (or if not then trading on the Nasdaq Stock Market, the closing sale price of the Shares on the stock exchange or over-the-counter market on which the Shares are principally trading on such date), or, if there were no sales on such date, on the closest preceding date on which there were sales of Shares or (2) in the event there shall be no public market for the Shares on such date, the fair market value of the Shares as determined in good faith by the Committee.

*“Good Reason”* as a reason for a Participant’s termination of employment or service shall have the meaning assigned such term in the employment, severance or similar agreement, if any, between the Participant and the Company or an Affiliate. If the Participant is not a party to an employment, severance or similar agreement with the Company or an Affiliate in which such term is defined, then unless otherwise defined in the applicable Award Agreement, for purposes of this Plan, the Participant shall not be entitled to terminate his or her employment or service for Good Reason.

*“Incentive Stock Option”* shall mean a right to purchase Shares from the Company that is granted under Section 6 of the Plan and that is intended to meet the requirements of Section 422 of the Code or any successor provision thereto. Incentive Stock Options may be granted only to Participants who meet the definition of “employees” under Section 3401(c) of the Code.

*“Negative Discretion”* shall mean the discretion authorized by the Plan to be applied by the Committee to eliminate or reduce the size of a Performance Compensation Award; *provided* that the exercise of such discretion would not cause the Performance Compensation Award to fail to qualify as “performance-based compensation” under Section 162(m) of the Code. By way of example and not by way of limitation, in no event shall any discretionary authority granted to the Committee by the Plan including, but not limited to, Negative Discretion, be used to (a) grant or provide payment in respect of Performance Compensation Awards for a Performance Period if the Performance Goals for such Performance Period have not been attained or (b) increase a Performance Compensation Award above the maximum amount payable under Section 4(a) or 11(d)(vi) of the Plan. In no event shall Negative Discretion be exercised by the Committee with respect to any Option or Stock Appreciation Right (other than an Option or Stock Appreciation Right that is intended to be a Performance Compensation Award under Section 11 of the Plan).

*“Non-Qualified Stock Option”* shall mean a right to purchase Shares from the Company that is granted under Section 6 of the Plan and that is not intended to be an Incentive Stock Option.

*“Option”* shall mean an Incentive Stock Option or a Non-Qualified Stock Option.

*“Other Stock-Based Award”* shall mean any right granted under Section 10 of the Plan.

*“Participant”* shall mean any employee of, or consultant to, the Company or its Affiliates, or non-employee director who is a member of the Board or the board of directors of an Affiliate, eligible for an Award under Section 5 and selected by the Committee to receive an Award under the Plan.

*“Performance Award”* shall mean any right granted under Section 9 of the Plan.

*“Performance Compensation Award”* shall mean any Award designated by the Committee as a Performance Compensation Award pursuant to Section 11 of the Plan.

*“Performance Criteria”* shall mean the criterion or criteria that the Committee shall select for purposes of establishing the Performance Goal(s) for a Performance Period with respect to any Performance Compensation Award under the Plan. The Performance Criteria that will be used to establish the Performance Goal(s) shall be based on the attainment of specific levels of performance of the Company (or an Affiliate, division or operational unit of the Company) and shall be limited to the following: return on net assets, return on stockholders’ equity, return on assets, return on capital, revenue, average revenue per subscriber, stockholder returns, profit margin, earnings per Share, net earnings, operating earnings, free cash flow, earnings before interest, taxes, depreciation and amortization, number of subscribers, growth of subscribers, operating expenses, capital expenses, subscriber acquisition costs, Share price, enterprise value, equity market capitalization or sales or market share. To the extent required under Section 162(m) of the Code, the Committee shall, within the first 90 days of a Performance Period (or, if longer, within the maximum period allowed under Section 162(m) of the Code), define in an objective fashion the manner of calculating the Performance Criteria it selects to use for such Performance Period.

*“Performance Formula”* shall mean, for a Performance Period, one or more objective formulas applied against the relevant Performance Goal to determine, with regard to the Performance Compensation Award of a particular Participant, whether all, some portion but less than all, or none of the Performance Compensation Award has been earned for the Performance Period.

*“Performance Goals”* shall mean, for a Performance Period, one or more goals established by the Committee for the Performance Period based upon the Performance Criteria. The Committee is authorized at any time during the first 90 days of a Performance Period, or at any time thereafter (but only to the extent the exercise of such authority after the first 90 days of a Performance Period would not cause the Performance Compensation Awards granted to any Participant for the Performance Period to fail to qualify as ‘performance-based compensation’ under Section 162(m) of the Code), in its sole discretion, to adjust or modify the calculation of a Performance Goal for such Performance Period to the extent permitted under Section 162(m) of the Code in order to prevent the dilution or enlargement of the rights of Participants, (a) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event or development affecting the Company; or (b) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company, or the financial statements of the Company, or in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions.

*“Performance Period”* shall mean the one or more periods of time of at least one year in duration, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to and the payment of a Performance Compensation Award.

*“Person”* shall mean any individual, corporation, partnership, association, limited liability company, joint-stock company, trust, unincorporated organization, government or political subdivision.

*“Plan”* shall mean this Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan.

*“Restricted Stock”* shall mean any Share granted under Section 8 of the Plan.

*“Restricted Stock Unit”* shall mean any unit granted under Section 8 of the Plan.

*“Rule 16b-3”* shall mean Rule 16b-3 as promulgated and interpreted by the SEC under the Exchange Act, or any successor rule or regulation thereto as in effect from time to time.

*“SEC”* shall mean the Securities and Exchange Commission or any successor thereto and shall include the Staff thereof.



“*Shares*” shall mean the common stock of the Company, \$.001 par value, or such other securities of the Company (i) into which such common stock shall be changed by reason of a recapitalization, merger, consolidation, split-up, combination, exchange of shares or other similar transaction or (ii) as may be determined by the Committee pursuant to Section 4(b) of the Plan.

“*Stock Appreciation Right*” shall mean any right granted under Section 7 of the Plan.

“*Substitute Awards*” shall have the meaning specified in Section 4(c) of the Plan.

SECTION 3. Administration. (a) The Plan shall be administered by the Committee. Subject to the terms of the Plan and applicable law, and in addition to other express powers and authorizations conferred on the Committee by the Plan, the Committee shall have full power and authority to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant and designate those Awards which shall constitute Performance Compensation Awards; (iii) determine the number of Shares to be covered by, or with respect to which payments, rights, or other matters are to be calculated in connection with, Awards; (iv) determine the terms and conditions of any Award; (v) determine whether, to what extent, and under what circumstances Awards may be settled or exercised in cash, Shares, other securities, other Awards or other property, or canceled, forfeited, or suspended and the method or methods by which Awards may be settled, exercised, canceled, forfeited, or suspended; (vi) determine whether, to what extent, and under what circumstances cash, Shares, other securities, other Awards, other property, and other amounts payable with respect to an Award (subject to Section 162(m) of the Code with respect to Performance Compensation Awards) shall be deferred either automatically or at the election of the holder thereof or of the Committee (in each case consistent with Section 409A of the Code); (vii) interpret, administer or reconcile any inconsistency, correct any defect, resolve ambiguities and/or supply any omission in the Plan, any Award Agreement, and any other instrument or agreement relating to, or Award made under, the Plan; (viii) establish, amend, suspend, or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan; (ix) establish and administer Performance Goals and certify whether, and to what extent, they have been attained; and (x) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan.

(b) Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan or any Award shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive, and binding upon all Persons, including the Company, any Affiliate, any Participant, any holder or beneficiary of any Award, and any stockholder.

(c) The mere fact that a Committee member shall fail to qualify as a “Non-Employee Director” or “outside director” within the meaning of Rule 16b-3 and Section 162(m) of the Code, respectively, shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan.

(d) No member of the Committee shall be liable to any Person for any action or determination made in good faith with respect to the Plan or any Award hereunder.

(e) With respect to any Performance Compensation Award granted to a Covered Employee (within the meaning of Section 162(m) of the Code) under the Plan, the Plan shall be interpreted and construed in accordance with Section 162(m) of the Code.

(f) The Committee may delegate to one or more officers of the Company (or, in the case of awards of Shares, the Board may delegate to a committee made up of one or more directors) the authority to grant awards to Participants who are not executive officers or directors of the Company subject to Section 16 of the Exchange Act or Covered Employees (within the meaning of Section 162(m) of the Code).

#### SECTION 4. Shares Available for Awards.

(a) *Shares Available.*

(i) Subject to adjustment as provided in Section 4(b), the aggregate number of Shares with respect to which Awards may be granted from time to time under the Plan shall in the aggregate not exceed, at any time, 600 million; *provided*, that the aggregate number of Shares with respect to which Incentive Stock Options may

be granted under the Plan shall be 120 million. The maximum number of Shares with respect to which Options and Stock Appreciation Rights may be granted to any Participant in any fiscal year shall be 120 million and the maximum number of Shares which may be paid to a Participant in the Plan in connection with the settlement of any Award(s) designated as “Performance Compensation Awards” in respect of a single Performance Period shall be 120 million or, in the event such Performance Compensation Award is paid in cash, the equivalent cash value thereof.

(ii) Shares covered by an Award granted under the Plan shall not be counted unless and until they are actually issued and delivered to a Participant and, therefore, the total number of Shares available under the Plan as of a given date shall not be reduced by Shares relating to prior Awards that have expired or have been forfeited or cancelled, and upon payment in cash of the benefit provided by any Award, any Shares that were covered by such Award will be available for issue hereunder. Notwithstanding anything to the contrary contained herein: (A) if Shares are tendered or otherwise used in payment of the exercise price of an Option, the total number of Shares covered by the Option being exercised shall reduce the aggregate limit described in Section 4(a)(i); (B) Shares withheld by the Company to satisfy a tax withholding obligation shall count against the aggregate limit described in Section 4(a)(i); and (C) the number of Shares covered by a Stock Appreciation Right, to the extent that it is exercised and settled in Shares, and whether or not Shares are actually issued to the Participant upon exercise of the Stock Appreciation Right, shall be considered issued or transferred pursuant to the Plan. If, under this Plan, a Participant has elected to give up the right to receive compensation in exchange for Shares based on fair market value, such Shares will not count against the aggregate limit described in Section 4(a)(i).

(b) *Adjustments.* Notwithstanding any provisions of the Plan to the contrary, in the event that the Committee determines in its sole discretion that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other corporate transaction or event affects the Shares such that an adjustment is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall equitably adjust any or all of (i) the number of Shares or other securities of the Company (or number and kind of other securities or property) with respect to which Awards may be granted, (ii) the number of Shares or other securities of the Company (or number and kind of other securities or property) subject to outstanding Awards, and (iii) the grant or exercise price with respect to any Award or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding Award in consideration for the cancellation of such Award, which, in the case of Options and Stock Appreciation Rights shall equal the excess, if any, of the Fair Market Value of the Share subject to each such Option or Stock Appreciation Right over the per Share exercise price or grant price of such Option or Stock Appreciation Right.

(c) *Substitute Awards.* Awards may, in the discretion of the Committee, be made under the Plan in assumption of, or in substitution for, outstanding awards previously granted by the Company or its Affiliates or a company acquired by the Company or with which the Company combines (“Substitute Awards”). The number of Shares underlying any Substitute Awards shall be counted against the aggregate number of Shares available for Awards under the Plan.

(d) *Sources of Shares Deliverable Under Awards.* Any Shares delivered pursuant to an Award may consist, in whole or in part, of authorized and unissued Shares or of treasury Shares.

SECTION 5. *Eligibility.* Any employee of, or consultant to, the Company or any of its Affiliates (including any prospective employee), or non-employee director who is a member of the Board or the board of directors of an Affiliate, shall be eligible to be selected as a Participant.

#### SECTION 6. *Stock Options.*

(a) *Grant.* Subject to the terms of the Plan, the Committee shall have sole authority to determine the Participants to whom Options shall be granted, the number of Shares to be covered by each Option, the exercise price thereof and the conditions and limitations applicable to the exercise of the Option. The Committee shall have the authority to grant Incentive Stock Options, or to grant Non-Qualified Stock Options,

or to grant both types of Options. In the case of Incentive Stock Options, the terms and conditions of such grants shall be subject to and comply with such rules as may be prescribed by Section 422 of the Code, as from time to time amended, and any regulations implementing such statute. All Options when granted under the Plan are intended to be Non-Qualified Stock Options, unless the applicable Award Agreement expressly states that the Option is intended to be an Incentive Stock Option. If an Option is intended to be an Incentive Stock Option, and if for any reason such Option (or any portion thereof) shall not qualify as an Incentive Stock Option, then, to the extent of such nonqualification, such Option (or portion thereof) shall be regarded as a Non-Qualified Stock Option appropriately granted under the Plan; *provided* that such Option (or portion thereof) otherwise complies with the Plan's requirements relating to Non-Qualified Stock Options. No Option shall be exercisable more than ten years from the date of grant.

(b) *Exercise Price.* The Committee shall establish the exercise price at the time each Option is granted, which exercise price shall be set forth in the applicable Award Agreement and which shall not be less than the Fair Market Value per Share on the date of grant.

(c) *Exercise.* Each Option shall be exercisable at such times and subject to such terms and conditions as the Committee may, in its sole discretion, specify in the applicable Award Agreement. The Committee may impose such conditions with respect to the exercise of Options, including without limitation, any relating to the application of federal or state securities laws, as it may deem necessary or advisable.

(d) *Payment.* (i) No Shares shall be delivered pursuant to any exercise of an Option until payment in full of the aggregate exercise price therefore is received by the Company. Such payment may be made in cash, or its equivalent, or (x) by exchanging Shares owned by the optionee (which are not the subject of any pledge or other security interest and which have been owned by such optionee for at least six months), or (y) subject to such rules as may be established by the Committee, through delivery of irrevocable instructions to a broker to sell the Shares otherwise deliverable upon the exercise of the Option and to deliver promptly to the Company an amount equal to the aggregate exercise price or by a combination of the foregoing, *provided* that the combined value of all cash and cash equivalents and the Fair Market Value of any such Shares so tendered to the Company as of the date of such tender is at least equal to such aggregate exercise price.

(ii) Wherever in this Plan or any Award Agreement a Participant is permitted to pay the exercise price of an Option or taxes relating to the exercise of an Option by delivering Shares, the Participant may, subject to procedures satisfactory to the Committee, satisfy such delivery requirement by presenting proof of beneficial ownership of such Shares, in which case the Company shall treat the Option as exercised without further payment and shall withhold such number of Shares from the Shares acquired by the exercise of the Option.

#### SECTION 7. Stock Appreciation Rights.

(a) *Grant.* Subject to the provisions of the Plan, the Committee shall have sole authority to determine the Participants to whom Stock Appreciation Rights shall be granted, the number of Shares to be covered by each Stock Appreciation Right Award, the grant price thereof and the conditions and limitations applicable to the exercise thereof. Stock Appreciation Rights with a grant price equal to or greater than the Fair Market Value per Share as of the date of grant are intended to qualify as "performance-based compensation" under Section 162(m) of the Code. In the sole discretion of the Committee, Stock Appreciation Rights may, but need not, be intended to qualify as performance-based compensation in accordance with Section 11 hereof. Stock Appreciation Rights may be granted in tandem with another Award, in addition to another Award, or freestanding and unrelated to another Award. Stock Appreciation Rights granted in tandem with or in addition to an Award may be granted either before, at the same time as the Award or at a later time. No Stock Appreciation Right shall be exercisable more than ten years from the date of grant.

(b) *Exercise and Payment.* A Stock Appreciation Right shall entitle the Participant to receive an amount equal to the excess of the Fair Market Value of a Share on the date of exercise of the Stock Appreciation Right over the grant price thereof (which shall not be less than the Fair Market Value on the date of grant). The Committee shall determine in its sole discretion whether a Stock Appreciation Right shall be settled in cash, Shares or a combination of cash and Shares.

(c) *Other Terms and Conditions.* Subject to the terms of the Plan and any applicable Award Agreement, the Committee shall determine, at the grant of a Stock Appreciation Right, the term, methods of exercise, methods and form of settlement, and any other terms and conditions of any Stock Appreciation Right. The Committee may impose such conditions or restrictions on the exercise of any Stock Appreciation Right as it shall deem appropriate.

SECTION 8. *Restricted Stock and Restricted Stock Units.*

(a) *Grant.* Subject to the provisions of the Plan, the Committee shall have sole authority to determine the Participants to whom Shares of Restricted Stock and Restricted Stock Units shall be granted, the number of Shares of Restricted Stock and/or the number of Restricted Stock Units to be granted to each Participant, the duration of the period during which, and the conditions, if any, under which, the Restricted Stock and Restricted Stock Units may be forfeited to the Company, and the other terms and conditions of such Awards.

(b) *Transfer Restrictions.* Shares of Restricted Stock and Restricted Stock Units may not be sold, assigned, transferred, pledged or otherwise encumbered, except, in the case of Restricted Stock, as provided in the Plan or the applicable Award Agreements. Unless otherwise directed by the Committee, (i) certificates issued in respect of Shares of Restricted Stock shall be registered in the name of the Participant and deposited by such Participant, together with a stock power endorsed in blank, with the Company, or (ii) Shares of Restricted Stock shall be held at the Company's transfer agent in book entry form with appropriate restrictions relating to the transfer of such Shares of Restricted Stock. Upon the lapse of the restrictions applicable to such Shares of Restricted Stock, the Company shall, as applicable, either deliver such certificates to the Participant or the Participant's legal representative or the transfer agent shall remove the restrictions relating to the transfer of such Shares.

(c) *Payment.* Each Restricted Stock Unit shall have a value equal to the Fair Market Value of a Share. Restricted Stock Units shall be paid in cash, Shares, other securities or other property, as determined in the sole discretion of the Committee, upon the lapse of the restrictions applicable thereto, or otherwise in accordance with the applicable Award Agreement. Dividends paid on any Shares of Restricted Stock shall be paid directly to the Participant, withheld by the Company subject to vesting of the Restricted Stock pursuant to the terms of the applicable Award Agreement, or may be reinvested in additional Shares of Restricted Stock or in additional Restricted Stock Units, as determined by the Committee in its sole discretion.

SECTION 9. *Performance Awards.*

(a) *Grant.* The Committee shall have sole authority to determine the Participants who shall receive a "Performance Award", which shall consist of a right which is (i) denominated in cash or Shares, (ii) valued, as determined by the Committee, in accordance with the achievement of such Performance Goals during such Performance Periods as the Committee shall establish, and (iii) payable at such time and in such form as the Committee shall determine.

(b) *Terms and Conditions.* Subject to the terms of the Plan and any applicable Award Agreement, the Committee shall determine the Performance Goals to be achieved during any Performance Period, the length of any Performance Period, the amount of any Performance Award and the amount and kind of any payment or transfer to be made pursuant to any Performance Award.

(c) *Payment of Performance Awards.* Performance Awards may be paid in a lump sum or in installments following the close of the Performance Period as set forth in the Award Agreement on the date of grant.

SECTION 10. *Other Stock-Based Awards.*

(a) *General.* The Committee shall have authority to grant to Participants an "Other Stock-Based Award", which shall consist of any right which is (i) not an Award described in Sections 6 through 9 above and (ii) an Award of Shares or an Award denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, Shares (including, without limitation, securities convertible into Shares), as deemed by the Committee to be consistent with the purposes of the Plan; *provided* that any such rights must comply, to the extent deemed desirable by the Committee, with Rule 16b-3 and applicable law. Subject to the terms of the Plan and any applicable Award Agreement, the Committee shall determine the

terms and conditions of any such Other Stock-Based Award, including the price, if any, at which securities may be purchased pursuant to any Other Stock-Based Award granted under this Plan.

(b) *Dividend Equivalents.* In the sole discretion of the Committee, an Award (other than Options or Stock Appreciation Rights), whether made as an Other Stock-Based Award under this Section 10 or as an Award granted pursuant to Sections 6 through 9 hereof, may provide the Participant with dividends or dividend equivalents, payable in cash, Shares, other securities or other property on a current or deferred basis; *provided*, that in the case of Awards with respect to which any applicable Performance Criteria have not been achieved, dividend equivalents may be paid only on a deferred basis, to the extent the underlying Award vests.

SECTION 11. *Performance Compensation Awards.*

(a) *General.* The Committee shall have the authority, at the time of grant of any Award described in Sections 6 through 10 (other than Options and Stock Appreciation Rights), to designate such Award as a Performance Compensation Award in order to qualify such Award as “performance-based compensation” under Section 162(m) of the Code.

(b) *Eligibility.* The Committee will, in its sole discretion, designate within the first 90 days of a Performance Period (or, if longer, within the maximum period allowed under Section 162(m) of the Code) which Participants will be eligible to receive Performance Compensation Awards in respect of such Performance Period. Designation of a Participant eligible to receive an Award hereunder for a Performance Period shall not in any manner entitle the Participant to receive payment in respect of any Performance Compensation Award for such Performance Period. The determination as to whether or not such Participant becomes entitled to payment in respect of any Performance Compensation Award shall be decided solely in accordance with the provisions of this Section 11. Moreover, designation of a Participant eligible to receive an Award hereunder for a particular Performance Period shall not require designation of such Participant eligible to receive an Award hereunder in any subsequent Performance Period and designation of one person as a Participant eligible to receive an Award hereunder shall not require designation of any other person as a Participant eligible to receive an Award hereunder in such period or in any other period.

(c) *Discretion of Committee with Respect to Performance Compensation Awards.* With regard to a particular Performance Period, the Committee shall have full discretion to select the length of such Performance Period, the type(s) of Performance Compensation Awards to be issued, the Performance Criteria that will be used to establish the Performance Goal(s), the kind(s) and/or level(s) of the Performance Goals(s) is/are to apply to the Company and the Performance Formula. Within the first 90 days of a Performance Period (or, if longer, within the maximum period allowed under Section 162(m) of the Code), the Committee shall, with regard to the Performance Compensation Awards to be issued for such Performance Period, exercise its discretion with respect to each of the matters enumerated in the immediately preceding sentence of this Section 11(c) and record the same in writing.

(d) *Payment of Performance Compensation Awards.* (i) Unless otherwise provided in the applicable Award Agreement, a Participant must be employed by the Company on the last day of a Performance Period to be eligible for payment in respect of a Performance Compensation Award for such Performance Period.

(ii) *Limitation.* A Participant shall be eligible to receive payment in respect of a Performance Compensation Award only to the extent that: (1) the Performance Goals for such period are achieved; and (2) the Performance Formula as applied against such Performance Goals determines that all or some portion of such Participant’s Performance Award has been earned for the Performance Period.

(iii) *Certification.* Following the completion of a Performance Period, the Committee shall meet to review and certify in writing whether, and to what extent, the Performance Goals for the Performance Period have been achieved and, if so, to calculate and certify in writing that amount of the Performance Compensation Awards earned for the period based upon the Performance Formula. The Committee shall then determine the actual size of each Participant’s Performance Compensation Award for the Performance Period and, in so doing, may apply Negative Discretion, if and when it deems appropriate.



(iv) *Negative Discretion.* In determining the actual size of an individual Performance Award for a Performance Period, the Committee may reduce or eliminate the amount of the Performance Compensation Award earned under the Performance Formula in the Performance Period through the use of Negative Discretion if, in its sole judgment, such reduction or elimination is appropriate.

(v) *Timing of Award Payments.* The Awards granted for a Performance Period shall be paid to Participants as soon as administratively possible following completion of the certifications required by this Section 11; *provided* that in no event shall any Award granted for a Performance Period be paid later than the fifteenth day of the third month following the end of such Performance Period.

(vi) *Maximum Award Payable.* Notwithstanding any provision contained in the Plan to the contrary, the maximum Performance Compensation Award payable to any one Participant under the Plan for a Performance Period is 120 million Shares or, in the event the Performance Compensation Award is paid in cash, the equivalent cash value thereof on the last day of the Performance Period to which such Award relates. Furthermore, any Performance Compensation Award that has been deferred shall not (between the date as of which the Award is deferred and the payment date) increase (i) with respect to Performance Compensation Award that is payable in cash, by a measuring factor for each fiscal year greater than a reasonable rate of interest set by the Committee or (ii) with respect to a Performance Compensation Award that is payable in Shares, by an amount greater than the appreciation of a Share from the date such Award is deferred to the payment date.

## SECTION 12. Amendment and Termination.

(a) *Amendments to the Plan.* The Board may amend, alter, suspend, discontinue, or terminate the Plan or any portion thereof at any time; *provided* that if an amendment to the Plan that (i) would materially increase the benefits accruing to Participants under the Plan, (ii) would materially increase the number of securities which may be issued under the Plan, (iii) would materially modify the requirements for participation in the Plan or (iv) must otherwise be approved by the stockholders of the Company in order to comply with applicable law or the rules of the Nasdaq Stock Market, or, if the Shares are not traded on the Nasdaq Stock Market, the principal national securities exchange upon which the Shares are traded or quoted, such amendment will be subject to stockholder approval and will not be effective unless and until such approval has been obtained; and *provided, further*, that any such amendment, alteration, suspension, discontinuance or termination that would impair the rights of any Participant or any holder or beneficiary of any Award previously granted shall not be effective without the written consent of the affected Participant, holder or beneficiary.

(b) *Amendments to Awards.* The Committee may waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Award theretofore granted; *provided* that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would impair the rights of any Participant or any holder or beneficiary of any Award previously granted shall not be effective without the written consent of the affected Participant, holder or beneficiary.

(c) *Adjustment of Awards Upon the Occurrence of Certain Unusual or Nonrecurring Events.* The Committee is hereby authorized to make equitable adjustments in the terms and conditions of, and the criteria included in, all outstanding Awards in recognition of unusual or nonrecurring events (including, without limitation, the events described in Section 4(b) hereof) affecting the Company, any Affiliate, or the financial statements of the Company or any Affiliate, or of changes in applicable laws, regulations, or accounting principles, whenever the Committee determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan.

(d) *Repricing.* Except in connection with a corporate transaction or event described in Section 4(b) hereof, the terms of outstanding Awards may not be amended to reduce the exercise price of Options or the grant price of Stock Appreciation Rights, or cancel Options or Stock Appreciation Rights in exchange for cash, other awards or Options or Stock Appreciation Rights with an exercise price or grant price, as applicable, that is less than the exercise price of the original Options or grant price of the original Stock Appreciation Rights, as applicable, without stockholder approval.

### SECTION 13. Change of Control.

(a) Except as otherwise provided in an Award Agreement or by the Committee in a written resolution at the date of grant, to the extent outstanding Awards granted under this Plan are not assumed, converted or replaced by the resulting entity in the event of a Change of Control, all outstanding Awards that may be exercised shall become fully exercisable, all restrictions with respect to outstanding Awards shall lapse and become vested and non-forfeitable, and any specified Performance Goals with respect to outstanding Awards shall be deemed to be satisfied at target.

(b) Except as otherwise provided in an Award Agreement or by the Committee in a written resolution at the date of grant or thereafter, to the extent outstanding Awards granted under this Plan are assumed, converted or replaced by the resulting entity in the event of a Change of Control, (i) any outstanding Awards that are subject to Performance Goals shall be converted by the resulting entity as if target performance had been achieved as of the date of the Change of Control, (ii) each Performance Award or Performance Compensation Award with service requirements shall continue to vest with respect to such requirements during the remaining period set forth in the Award Agreement, and (iii) all other Awards shall continue to vest (and/or the restrictions thereon shall continue to lapse) during the remaining period set forth in the Award Agreement.

(c) Except as otherwise provided in an Award Agreement or by the Committee in a written resolution at the date of grant or thereafter, to the extent outstanding Awards granted under this Plan are either assumed, converted or replaced by the resulting entity in the event of a Change of Control, if a Participant's employment or service is terminated without Cause by the Company or an Affiliate or a Participant terminates his or her employment or service with the Company or an Affiliate for Good Reason (if applicable), in either case, during the two year period following a Change of Control, all outstanding Awards held by the Participant that may be exercised shall become fully exercisable and all restrictions with respect to outstanding Awards shall lapse and become vested and non-forfeitable.

(d) Notwithstanding anything in this Plan or any Award Agreement to the contrary, to the extent any provision of this Plan or an Award Agreement would cause a payment of deferred compensation that is subject to Section 409A of the Code to be made upon the occurrence of (i) a Change of Control, then such payment shall not be made unless such Change of Control also constitutes a "change in ownership", "change in effective control" or "change in ownership of a substantial portion of the Company's assets" within the meaning of Section 409A of the Code or (ii) a termination of employment or service, then such payment shall not be made unless such termination of employment or service also constitutes a "separation from service" within the meaning of Section 409A of the Code. Any payment that would have been made except for the application of the preceding sentence shall be made in accordance with the payment schedule that would have applied in the absence of a Change of Control or termination of employment or service, but disregarding any future service or performance requirements.

### SECTION 14. General Provisions.

#### (a) *Nontransferability.*

(i) Each Award, and each right under any Award, shall be exercisable only by the Participant during the Participant's lifetime, or, if permissible under applicable law, by the Participant's legal guardian or representative.

(ii) No Award may be sold, assigned, alienated, pledged, attached or otherwise transferred or encumbered by a Participant otherwise than by will or by the laws of descent and distribution, and any such purported sale, assignment, alienation, pledge, attachment, transfer or encumbrance shall be void and unenforceable against the Company or any Affiliate; *provided* that the designation of a beneficiary shall not constitute a sale, assignment, alienation, pledge, attachment, transfer or encumbrance.

(b) *No Rights to Awards.* No Participant or other Person shall have any claim to be granted any Award, and there is no obligation for uniformity of treatment of Participants, or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant (whether or not such Participants are similarly situated).



(c) *Share Certificates.* Shares or other securities of the Company or any Affiliate delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations, and other requirements of the SEC, any stock exchange upon which such Shares or other securities are then listed, and any applicable Federal or state laws, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

(d) *Withholding.* (i) A Participant may be required to pay to the Company or any Affiliate, and the Company or any Affiliate shall have the right and is hereby authorized to withhold from any Award, from any payment due or transfer made under any Award or under the Plan or from any compensation or other amount owing to a Participant the amount (in cash, Shares, other securities, other Awards or other property) of any applicable withholding taxes in respect of an Award, its exercise, or any payment or transfer under an Award or under the Plan and to take such other action as may be necessary in the opinion of the Company to satisfy all obligations for the payment of such taxes.

(ii) Without limiting the generality of clause (i) above, a Participant may satisfy, in whole or in part, the foregoing withholding liability by delivery of Shares owned by the Participant (which are not subject to any pledge or other security interest and which have been owned by the Participant for at least six months) with a Fair Market Value equal to such withholding liability or by having the Company withhold from the number of Shares otherwise issuable pursuant to the exercise of the option a number of Shares with a Fair Market Value equal to such withholding liability.

(e) *Award Agreements.* Each Award hereunder shall be evidenced by an Award Agreement which shall be delivered to the Participant and shall specify the terms and conditions of the Award and any rules applicable thereto, including but not limited to the effect on such Award of the death, disability or termination of employment or service of a Participant and the effect, if any, of such other events as may be determined by the Committee.

(f) *No Limit on Other Compensation Arrangements.* Nothing contained in the Plan shall prevent the Company or any Affiliate from adopting or continuing in effect other compensation arrangements, which may, but need not, provide for the grant of options, restricted stock, Shares and other types of Awards provided for hereunder (subject to stockholder approval if such approval is required), and such arrangements may be either generally applicable or applicable only in specific cases.

(g) *No Right to Employment.* The grant of an Award shall not be construed as giving a Participant the right to be retained in the employ of, or in any consulting relationship to, or as a director on the Board or board of directors, as applicable, of, the Company or any Affiliate. Further, the Company or an Affiliate may at any time dismiss a Participant from employment or discontinue any consulting relationship, free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan, any Award Agreement or any applicable employment contract or agreement.

(h) *No Rights as Stockholder.* Subject to the provisions of the applicable Award, no Participant or holder or beneficiary of any Award shall have any rights as a stockholder with respect to any Shares to be distributed under the Plan until he or she has become the holder of such Shares. Notwithstanding the foregoing, in connection with each grant of Restricted Stock hereunder, the applicable Award shall specify if and to what extent the Participant shall not be entitled to the rights of a stockholder in respect of such Restricted Stock.

(i) *Governing Law.* The validity, construction, and effect of the Plan and any rules and regulations relating to the Plan and any Award Agreement shall be determined in accordance with the laws of the State of New York, applied without giving effect to its conflict of laws principles.

(j) *Severability.* If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any Person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall

be stricken as to such jurisdiction, Person or Award and the remainder of the Plan and any such Award shall remain in full force and effect.

(k) *Other Laws.* The Committee may refuse to issue or transfer any Shares or other consideration under an Award if, acting in its sole discretion, it determines that the issuance or transfer of such Shares or such other consideration might violate any applicable law or regulation or entitle the Company to recover the same under Section 16(b) of the Exchange Act, and any payment tendered to the Company by a Participant, other holder or beneficiary in connection with the exercise of such Award shall be promptly refunded to the relevant Participant, holder or beneficiary. Without limiting the generality of the foregoing, no Award granted hereunder shall be construed as an offer to sell securities of the Company, and no such offer shall be outstanding, unless and until the Committee in its sole discretion has determined that any such offer, if made, would be in compliance with all applicable requirements of the U.S. federal securities laws.

(l) *No Trust or Fund Created.* Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Affiliate and a Participant or any other Person. To the extent that any Person acquires a right to receive payments from the Company or any Affiliate pursuant to an Award, such right shall be no greater than the right of any unsecured general creditor of the Company or any Affiliate.

(m) *No Fractional Shares.* No fractional Shares shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities, or other property shall be paid or transferred in lieu of any fractional Shares or whether such fractional Shares or any rights thereto shall be canceled, terminated, or otherwise eliminated.

(n) *Deferrals.* In the event the Committee permits a Participant to defer any Award payable in the form of cash, all such elective deferrals shall be accomplished by the delivery of a written, irrevocable election by the Participant on a form provided by the Company. All deferrals shall be made in accordance with administrative guidelines established by the Committee to ensure that such deferrals comply with all applicable requirements of Section 409A of the Code.

(o) *Headings.* Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof.

#### SECTION 15. Compliance with Section 409A of the Code.

(a) To the extent applicable, it is intended that this Plan and any grants made hereunder comply with the provisions of Section 409A of the Code, so that the income inclusion provisions of Section 409A(a)(1) of the Code do not apply to the Participants. This Plan and any grants made hereunder shall be administered in a manner consistent with this intent.

(b) Neither a Participant nor any of a Participant's creditors or beneficiaries shall have the right to subject any deferred compensation (within the meaning of Section 409A of Code) payable under this Plan and grants hereunder to any anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Except as permitted under Section 409A of the Code, any deferred compensation (within the meaning of Section 409A of the Code) payable to a Participant or for a Participant's benefit under this Plan and grants hereunder may not be reduced by, or offset against, any amount owing by a Participant to the Company or any of its Affiliates.

(c) If, at the time of a Participant's separation from service (within the meaning of Section 409A of the Code), (i) the Participant shall be a specified employee (within the meaning of Section 409A of the Code and using the identification methodology selected by the Company from time to time) and (ii) the Company shall make a good faith determination that an amount payable hereunder constitutes deferred compensation (within the meaning of Section 409A of the Code) the payment of which is required to be delayed pursuant to the six-month delay rule set forth in Section 409A of the Code in order to avoid taxes or penalties under Section 409A of the Code, then the Company shall not pay such amount on the otherwise scheduled payment date but shall instead pay it, with interest, on the earlier of the first business day of the seventh month or death.

(d) Notwithstanding any provision of this Plan and grants hereunder to the contrary, in light of the uncertainty with respect to the proper application of Section 409A of the Code, the Company shall amend this Plan and grants hereunder as the Company deems necessary or desirable to avoid the imposition of taxes or penalties under Section 409A of the Code. In any case, a Participant shall be solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on a Participant or for a Participant's account in connection with this Plan and grants hereunder (including any taxes and penalties under Section 409A of the Code), and neither the Company nor any of its Affiliates shall have any obligation to indemnify or otherwise hold a Participant harmless from any or all of such taxes or penalties.

SECTION 16. Term of the Plan.

(a) *Effective Date.* The Plan shall be effective as of the date of its approval by the Board (the "Effective Date"), subject to approval of the Plan by the stockholders of the Company. No grants will be made under the Existing Plans on or after the date the Plan is first approved by the stockholders of the Company, except that outstanding awards granted under the Existing Plans will continue unaffected following the Effective Date.

(b) *Expiration Date.* No grant will be made under this Plan more than ten years after the Effective Date, but all grants made on or prior to such date will continue in effect thereafter subject to the terms thereof and of this Plan.

# Corporate Information

## Management

### **Mel Karmazin**

Chief Executive Officer

### **Scott A. Greenstein**

President and Chief Content Officer

### **James E. Meyer**

President, Operations and Sales

### **Dara F. Altman**

Executive Vice President and Chief Administrative Officer

### **Patrick L. Donnelly**

Executive Vice President, General Counsel and Secretary

### **David J. Frear**

Executive Vice President and Chief Financial Officer

## Board of Directors

### **Common Stock Directors**

#### **Gary M. Parsons**

Chairman of the Board  
Sirius XM Radio Inc.

#### **Joan L. Amble**

Director  
Executive Vice President and  
Corporate Comptroller  
American Express Company

#### **Leon D. Black**

Director  
Founding Partner  
Apollo Management, L.P.

#### **Lawrence F. Gilberti**

Director  
Partner  
Reed Smith LLP

#### **Eddy W. Hartenstein**

Director  
Publisher and CEO  
Los Angeles Times

#### **James P. Holden**

Director  
President and CEO (Retired) Chrysler  
Corporation

#### **Chester A. Huber, Jr.**

Director  
President  
OnStar Corporation

#### **Mel Karmazin**

Director  
Chief Executive Officer  
Sirius XM Radio Inc.

#### **John W. Mendel**

Director  
Executive Vice President  
American Honda Motor Co., Inc.

#### **James F. Mooney**

Director  
Chairman  
Virgin Media Inc.

#### **Jack Shaw**

Director  
Chief Executive Officer (Retired)  
Hughes Electronics Corporation

#### **Jeffrey D. Zients**

Director  
Managing Partner  
Portfolio Logic, LLC

### **Preferred Stock Directors**

#### **Gregory B. Maffei**

Director  
President and CEO  
Liberty Media Corporation

#### **John C. Malone**

Director  
Chairman of the Board  
Liberty Media Corporation

#### **David J.A. Flowers**

Director  
Senior Vice President and Treasurer  
Liberty Media Corporation

## Executive Offices

### **Sirius XM Radio Inc.**

1221 Avenue of the Americas 36th Floor  
New York, New York 10020  
212.584.5100  
[www.siriusxm.com](http://www.siriusxm.com)

# Stockholder Information

## Annual Stockholders Meeting

The annual meeting of Sirius XM stockholders is scheduled for 9:00 a.m., New York City time, on Wednesday, May 27, 2009, in The Auditorium at The Equitable Center, 787 Seventh Avenue, New York, New York 10019.

## Transfer Agent and Registrar

The transfer agent and registrar for the Company's common stock is:

### **BNY Mellon**

Shareowner Services  
P.O. Box 358015  
Pittsburgh, PA 15252-8015  
1-877-268-1949 (toll free) and  
201-680-6685 (international callers)  
800-231-5469 (hearing impaired TDD  
phone)  
[www.bnymellon.com/shareowner/isd](http://www.bnymellon.com/shareowner/isd)

Sirius XM common stock is listed on The NASDAQ Global Select Market under the symbol "SIRI".

## Independent Registered Public Accounting Firm

KPMG LLP  
345 Park Avenue  
New York, New York 10154

**SIRIUS XM**  
RADIO INC.