

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR FISCAL YEAR ENDED DECEMBER 31, 2009

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM TO

COMMISSION FILE NUMBER 001-34295

SIRIUS XM RADIO INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation of organization)

52-1700207
(I.R.S. Employer Identification Number)

1221 Avenue of the Americas, 36th Floor
New York, New York
(Address of principal executive offices)

10020
(Zip Code)

Registrant's telephone number, including area code: (212) 584-5100

Securities registered pursuant to Section 12(b) of the Act:

Title of each class: Common Stock, par value \$0.001 per share
Name of each exchange on which registered: Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Act:

None
(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes [X] No [ ]

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act.
Yes [ ] No [X]

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes [X] No [ ]

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes [ ] No [X]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer [ ] Accelerated filer [ ] Non-accelerated filer [ ] Smaller reporting company [X]
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant on June 30, 2009 was \$1,670,079,432. All executive officers and directors of the registrant have been deemed, solely for the purpose of the foregoing calculation, to be "affiliates" of the registrant.

The number of shares of the registrant's common stock outstanding as of February 23, 2010 was 3,884,668,860.

**Documents Incorporated by Reference**

Information included in our definitive proxy statement for our 2010 annual meeting of stockholders scheduled to be held on Thursday, May 27, 2010 is incorporated by reference in Items 10, 11, 12, 13 and 14 of Part III of this report.

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SIRIUS XM RADIO INC.  
2009 FORM 10-K ANNUAL REPORT

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## EXPLANATORY NOTE

Sirius XM Radio Inc. has two principal wholly-owned subsidiaries, XM Satellite Radio Holdings Inc. and Satellite CD Radio Inc. XM Satellite Radio Holdings Inc. owns XM Satellite Radio Inc., the operating company for the XM satellite radio service. Satellite CD Radio Inc. owns the Federal Communications Commission (“FCC”) license associated with the SIRIUS satellite radio service. XM Satellite Radio Inc. owns XM Radio Inc., the holder of the FCC license associated with the XM satellite radio service.

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., XM Satellite Radio Inc. and their respective 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.

The SIRIUS satellite radio business is conducted by SIRIUS; and the XM satellite radio business is conducted principally by XM under one management team. XM Holdings is primarily a holding company, although XM Holdings owns the former corporate headquarters and data center of XM and leases these buildings to XM; owns the XM-5 and portions of the XM-3 and XM-4 satellites; holds the investment in XM Canada; and holds certain cash accounts.

### 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 on Form 10-K 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 this Annual Report on Form 10-K and in other reports and documents published by us from time to time, particularly the risk factors described under “Risk Factors” in Item 1A of this Annual Report on Form 10-K.

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

- general economic conditions, which has adversely affected our business;
- our dependence upon automakers, many of which have experienced a dramatic drop in sales, and other third parties, such as manufacturers and distributors of satellite radios, retailers and programming providers;
- the substantial indebtedness of SIRIUS and XM;
- 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; 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.

## PART I

### ITEM 1. BUSINESS

We broadcast our music, sports, news, talk, entertainment, traffic and weather channels in the United States for a subscription fee through our proprietary satellite radio systems — the SIRIUS system and the XM system. In July 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 four in-orbit satellites, over 125 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. The XM system consists of four in-orbit satellites, over 650 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.

As of December 31, 2009, we had 18,772,758 subscribers. Our subscriber totals include:

- subscribers under our regular and 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;
- certain radios activated for daily rental fleet programs;
- certain subscribers to SIRIUS Internet Radio and XM Online, 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 to an annual, semi-annual, quarterly or monthly plan. We offer discounts for prepaid and long-term subscriptions as well as discounts for multiple subscriptions on each platform. Since the Merger, we have introduced new programming packages and made certain changes to the pricing of our services. In October 2008, we introduced “best of” programming to both SIRIUS and XM subscribers for an additional \$4.04 per month. In March 2009, we increased the price of our discounted second radio subscription plan from \$6.99 to \$8.99 per month. In March 2009, we began offering SIRIUS Internet Radio and XM Online, our Internet services, to our subscribers for an additional \$2.99 per month. Effective July 29, 2009, we began adding a U.S. Music Royalty Fee to subscriber invoices. The U.S. Music Royalty Fee is \$1.98 a month on our base \$12.95 subscriptions and \$.97 for base plans that are eligible for a second radio discount. We also derive revenue from activation and other 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.

Our satellite radios are primarily distributed through automakers (“OEMs”); nationwide through 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.

Sirius Satellite Radio Inc. was incorporated in the State of Delaware as Satellite CD Radio, Inc. on May 17, 1990. On December 7, 1992, Satellite CD Radio, Inc. changed its name to CD Radio Inc., and Satellite CD Radio, Inc. was formed as a wholly owned subsidiary. On November 18, 1999, CD Radio Inc. changed its name to Sirius Satellite Radio Inc. On August 5, 2008, we changed our name from Sirius Satellite Radio Inc. 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 covenants in our respective debt instruments.

#### Programming

We offer a dynamic programming lineup of more than 135 channels of commercial-free music, sports, news, talk, entertainment, and traffic and weather on each of the SIRIUS platform and the XM platform — of which 104 channels are available to subscribers on both platforms. The channel line-ups for the SIRIUS service and the XM service vary in certain respects and are available at [sirius.com](http://sirius.com) and [xmradio.com](http://xmradio.com).

Our subscription packages allow most listeners to customize and enhance our standard programming lineup. Our “Best of SIRIUS” package offers to XM subscribers the Howard Stern channels, Martha Stewart Living Radio, SIRIUS NFL Radio, SIRIUS NASCAR Radio, Playboy Radio and play-by-play NFL games and college sports programming. Our “Best of XM” package offers to SIRIUS subscribers Oprah Radio, The Virus, XM Public Radio, MLB Home Plate, NHL Home Ice, The PGA Tour Network, and select play-by-play of NBA and NHL games and college sports programming.

Subscribers with a la carte-capable radios may customize the programming they receive through our a la carte subscription packages. We also offer family friendly, “mostly music” and “mostly sports, news and talk” packages.

We make changes to our programming lineup from time to time as we strive to attract new subscribers and offer content that appeals to a broad range of audiences and to our existing subscribers.

### ***Music Programming***

The SIRIUS platform offers 69 channels and the XM platform offers 71 channels of commercial-free music. Each platform offers an extensive selection of music genres, ranging from rock, pop and hip-hop to country, dance, jazz, Latin and classical. Within each genre we offer a range of formats, styles and recordings.

All of our original music channels are broadcast commercial free. Certain of our music channels are programmed by third parties and air commercials. Our channels are produced, programmed and hosted by a team of experts in their fields, and each channel is operated as an individual radio station, with a distinct format and branding. We also from time to time provide special features, such as our *Artist Confidential* series which provides interviews and performances from some of the biggest names in music, and an array of “pop up” channels featuring the music of particular artists.

### ***Sports Programming***

Live play-by-play sports is an important part of our programming strategy. We are the Official Satellite Radio Partner of the National Football League (“NFL”), Major League Baseball (“MLB”), NASCAR, Formula One, NBA, NHL, and the PGA Tour, and broadcast most major college sports, including NCAA Division I football and basketball games. Soccer coverage includes matches from the Barclays English Premier League and UEFA Champions League. We also air FIS Alpine Skiing and World Cup events and horse racing.

We offer many exclusive talk channels and programs such as MLB’s “Home Plate,” SIRIUS NASCAR Radio, SIRIUS NFL Radio and Chris “Mad Dog” Russo’s *Mad Dog Unleashed* on Mad Dog Radio, as well as simulcasts of select ESPN television shows, including *SportsCenter*.

### ***Talk and Entertainment Programming***

We offer a multitude of talk and entertainment channels for a variety of audiences. Our diverse spectrum of talk programming is a significant differentiator from terrestrial radio and other audio entertainment providers.

In January 2006, Howard Stern moved his radio show to SIRIUS from terrestrial radio and now programs two of our channels. Our agreement with Stern expires on December 31, 2010. Our talk radio offerings also feature dozens of popular talk personalities, many creating radio shows that air exclusively on our services, including Oprah Winfrey, Martha Stewart, Rosie O’Donnell, Barbara Walters, Opie and Anthony, Bob Edwards, Senator Bill Bradley, Deepak Chopra and doctors from the NYU Langone Medical Center.

Our comedy channels present a range of humor such as Jamie Foxx’s *The Foxxhole*, *Laugh USA*, *Blue Collar Comedy* and *Raw Dog Comedy*. Other talk and entertainment channels include SIRIUS XM Book Radio, *Kids Place Live* and *Radio Disney*, as well as *OutQ*, *Road Dog Trucking* and *Playboy Radio*.

Our religious programming includes *The Catholic Channel*, which is programmed with the Archdiocese of New York; *EWTN*, a *Global Catholic Radio Network*; and *Family Talk* and *Family Net Radio*.

### ***News and Information Programming***

We offer a wide range of national, international and financial news, including news from *BBC World Service News*, *Bloomberg Radio*, *CNBC*, *CNN*, *FOX News*, *NPR* and *World Radio Network*.

We also offer continuous, local traffic reports for 21 metropolitan markets throughout the United States on the XM service, and 20 metropolitan markets throughout the United States on the SIRIUS service. We broadcast these reports, together with local and national weather reports from *The Weather Channel*.

We also air a range of political call-in talk shows on a variety of channels including our exclusive channel, *POTUS*.

## **Distribution of Radios**

### ***Automakers***

Our primary means of distributing satellite radios is through the sale and lease of new vehicles. We have agreements with every major automaker — Acura/Honda, Aston Martin, Audi, Automobili Lamborghini, Bentley, BMW, Chrysler, Dodge, Ferrari, Ford, General Motors, Honda, Hyundai, Infiniti/Nissan, Jaguar, Jeep, Kia, Land Rover, Lincoln, Lexus, Toyota, Scion, Subaru, Maybach, Mazda, Mercedes-Benz, Mercury, MINI, Mitsubishi, Porsche, Rolls-Royce, Volvo and Volkswagen — to offer either SIRIUS or XM satellite radios as factory or dealer-installed equipment in their vehicles. As of December 31, 2009, satellite radios were available as a factory or dealer-installed option in substantially all vehicle models sold in the United States.

Many automakers include a subscription to our radio service in the sale or lease price of their vehicles. In many cases, we receive subscription payments from automakers in advance of the activation of our service. We share with certain automakers a portion of the revenues we derive from subscribers using vehicles equipped to receive our service. We also reimburse various automakers for certain costs associated with the satellite radios installed in their vehicles, including in certain cases hardware costs, tooling expenses and promotional and advertising expenses.

***Retail***

We sell satellite radios directly to consumers through our websites. Satellite radios are also marketed and distributed through major national and regional retailers. We develop in-store merchandising materials and provide sales force training for several retailers.

***Previously Owned Vehicles***

We expect to acquire an increasing number of subscribers through the sale and lease of previously owned vehicles with factory installed satellite radios. We have entered into agreements with several automakers to market subscriptions to purchasers and lessees of vehicles which include satellite radios sold through their certified pre-owned programs.

We intend to develop systems and methods to identify purchasers and lessees of used vehicles which include satellite radios, and expect to make other efforts to market and sell satellite radio subscriptions to owners of used vehicles.

**Our Satellite Radio Systems**

Our satellite radio systems are designed to provide clear reception in most areas despite variations in terrain, buildings and other obstructions. Subscribers can receive our transmissions in all outdoor locations where the satellite radio has an unobstructed line-of-sight with one of our satellites or is within range of one of our terrestrial repeaters. We continually monitor our infrastructure and regularly evaluate improvements in technology.

The FCC has allocated the portion of the S-band located between 2320 MHz and 2345 MHz exclusively for satellite radio. Each of SIRIUS and XM uses 12.5 MHz of this bandwidth to transmit its respective signals. Uplink transmissions (from the ground to our satellites) use 12.5 MHz of bandwidth in the 7060-7072.5 MHz band.

Our satellite radio systems have three principal components:

- satellites, terrestrial repeaters and other satellite facilities;
- studios; and
- satellite radios.

***Satellites, Terrestrial Repeaters and Other Satellite Facilities***

*SIRIUS Satellites.* SIRIUS owns and operates four orbiting satellites, and owns a spare satellite that is in storage. Space Systems/Loral delivered the first three of SIRIUS' operating satellites in 2000, its spare satellite to ground storage in 2002, and its fourth operating satellite in 2009. The SIRIUS satellites are of the Loral FS-1300 model series.

Three of SIRIUS' orbiting satellites travel in a figure eight pattern extending above and below the equator, and spend approximately 16 hours per day north of the equator. At any time, two of these three orbiting satellites operate north of the equator while the third satellite does not transmit as it traverses the portion of the orbit south of the equator. This orbital configuration yields high signal elevation angles, reducing service interruptions from signal blockage. SIRIUS' fourth operating satellite is deployed in a geostationary orbit at 96° West Longitude. This provides redundant coverage and enhances performance of our satellite constellation.

Space Systems/Loral is constructing a sixth satellite for use in the SIRIUS system. This satellite is also a Loral FS-1300 model satellite. SIRIUS has an agreement with International Launch Services to launch this satellite on a Proton rocket, and expects to launch this sixth satellite in the fourth quarter of 2011. SIRIUS plans to deploy this satellite in a geostationary orbit at 115° West Longitude.

*XM Satellites.* 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. Each of these satellites was manufactured by Boeing Satellite Systems International. The XM satellites were launched in March 2001, May 2001, February 2005 and October 2006, respectively. The XM satellites are deployed in geostationary orbits at 85° West Longitude and 115° West Longitude.

Space Systems/Loral is constructing a fifth satellite, XM-5, for use in the XM system. XM-5 is a Loral FS-1300 model satellite. XM has an agreement with International Launch Services to launch XM-5 during the third quarter of 2010 on a Proton rocket.

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*Satellite Insurance.* SIRIUS does not maintain in-orbit insurance for three of its four operating satellites. XM currently has in-orbit insurance on XM-3 and XM-4, its primary operating satellites, but does not carry insurance coverage for XM-1 and XM-2, its in-orbit spare satellites.

These policies provide coverage for a total, constructive total or partial loss of the satellites that occurs during annual (or multi-year) in-orbit periods. The insurance does not cover the full cost of constructing, launching and insuring new satellites, nor will it protect us from the adverse effect on business operations due to the loss of a satellite. The policies contain standard commercial satellite insurance provisions, including coverage exclusions.

*Terrestrial Repeaters.* In some areas with high concentrations of tall buildings, such as urban centers, signals from our satellites may be blocked and reception of satellite signals can be adversely affected. In many of these areas, we have deployed terrestrial repeaters to supplement satellite coverage. SIRIUS operates over 125 terrestrial repeaters; XM operates over 650 terrestrial repeaters.

*Other Satellite Facilities.* SIRIUS controls and communicates with its satellites from an uplink facility in New Jersey. These activities include routine satellite orbital maneuvers and monitoring of the satellites. SIRIUS also maintains earth stations in Panama and Ecuador to control and communicate with its satellites. XM's satellites are monitored, tracked and controlled by Telesat Canada, a satellite operator. In addition, XM and SIRIUS operate backup stations in the United States.

### **Studios**

The programming on the SIRIUS and XM systems originates principally from studios in New York City and Washington D.C., and, to a lesser extent, from smaller studio facilities in Chicago, Cleveland, Los Angeles, Memphis, Nashville and Orlando. Our New York City offices house our corporate headquarters. Both our New York City and Washington D.C. offices house facilities for programming origination, programming personnel and facilities to transmit programming.

### **Satellite Radios**

We design, establish specifications for, source or specify parts and components for, and manage various aspects of the logistics and production of SIRIUS and XM radios. We do not manufacture radios. We have authorized manufacturers to produce and distribute SIRIUS and XM brand radios, and have licensed our technology to various electronics manufacturers to develop, manufacture and distribute radios under various consumer brands. We directly import certain radios distributed through our websites. Due to differences in technology, SIRIUS and XM radios require distinct chip sets to receive and output the respective satellite radio services. To facilitate the sale of SIRIUS and XM radios, we often subsidize a portion of the radio manufacturing costs to reduce the hardware price to consumers.

SIRIUS and XM radios are manufactured in three principal configurations — as in-dash radios, Dock & Play radios and portable or wearable radios.

- In-dash radios are integrated into vehicles and allow the user to listen to AM, FM or satellite radio with the push of a button. Aftermarket in-dash radios are available at retailers nationally, and to automakers for factory or dealer installation.
- Dock & Play radios enable subscribers to transport their SIRIUS or XM radios easily to and from their cars, trucks, homes, offices, boats or other locations with available adapter kits. Dock & Play radios adapt to existing audio systems through FM modulation or direct audio connection and can be easily installed. Audio systems and boom boxes, which enable subscribers to use their SIRIUS and XM radios virtually anywhere, are available for various models of Dock & Play radios. The SIRIUS Stratus 6 and SIRIUS Starmate 5 Dock & Play radios also support a la carte channel selection.
- Portable or wearable radios offer live satellite radio “on the go” and recorded satellite, MP3 and WMA content. The XMp3 allows consumers to record up to one hundred hours of XM and “Best of Sirius” programming, and is capable of recording up to five channels simultaneously. The Stiletto 2 allows consumers to record up to 100 hours of SIRIUS and “Best of XM” programming and can connect to the SIRIUS Internet Radio service through an accessible Wi-Fi network.

SIRIUS and XM home units that provide our satellite services to home and commercial audio systems are also available.

We have introduced an interoperable radio, called MiRGE, containing both SIRIUS and XM chip sets. This radio has a unified control interface allowing for easy switching between the two satellite radio networks. We have introduced the XM SkyDock, which connects to an Apple iPhone and iPod touch and provides live XM satellite radio using the control capability of the iPhone or iPod touch.

### **Internet Radio**

Both SIRIUS and XM simulcast music channels and select non-music channels over the Internet. Access to SIRIUS Internet Radio and XM Online are offered to subscribers for a fee. In 2009, we introduced new products that provide access to our internet radio services in the home, such as clock radios, without the need for a personal computer. We also developed and introduced an application for the Apple iPhone and iPod touch that permits consumers to access SIRIUS Internet Radio and XM Online on such devices. We expect to introduce similar applications to allow consumers to access SIRIUS Internet Radio and XM Online on other personal mobile devices. Subscribers to SIRIUS Internet Radio and XM Online are not included in our subscriber count, unless the service is purchased separately and not as part of a subscription to the SIRIUS or XM satellite radio service.



## **International**

*Canada.* We have an interest in the satellite radio services offered in Canada. SIRIUS Canada, a Canadian corporation that we jointly own with Canadian Broadcasting Corporation and Slight Communications Inc., offers a satellite radio service in Canada. SIRIUS Canada offers 120 channels of commercial-free music and news, sports, talk and entertainment programming, including 12 channels offering Canadian content. XM Canada, a Canadian corporation in which we have an ownership interest, also offers satellite radio service in Canada. XM Canada offers 130 channels of music and news, sports, talk and entertainment programming. Subscribers to the SIRIUS Canada service and the XM Canada service are not included in our subscriber count.

*Mexico.* We have entered into a letter of intent with a Mexican company, ACIR DARS Mexico, S. de R.L. de C.V., to pursue a license to offer satellite radio in Mexico. ACIR DARS Mexico has filed an application for a license to offer satellite radio with the Mexican government. The letter of intent contemplates us receiving a royalty from ACIR DARS Mexico as well as an option to acquire an equity interest in such Mexican business.

*Other regions.* We are in discussions with various parties regarding possible joint ventures in other countries.

## **Other Services**

*Commercial Accounts.* The SIRIUS and XM music services are also available for commercial establishments. Commercial accounts are available through providers of in-store entertainment solutions and directly from SIRIUS and XM. Commercial subscribers are included in our subscriber count.

*Satellite Television Services.* We offer music channels as part of certain programming packages on the DISH Network satellite television service. Our agreement to offer music channels as part of programming packages on the DirecTV satellite television service terminated in February 2010. Subscribers to the DISH Network satellite television service are not included in our subscriber count.

*SIRIUS and XM Content Through Mobile Phone Carriers.* SIRIUS and XM offer between 20 and 25 music and comedy channels to mobile phone users through relationships with AT&T, Alltel, Sprint and RIM. Subscribers to these services are not included in our subscriber count.

Subscribers to the following services are not included in our subscriber count, unless the applicable service is purchased by the subscriber separately and not as part of a subscription to the SIRIUS or XM satellite radio service:

*SIRIUS Backseat TV.* SIRIUS offers SIRIUS Backseat TV, a service offering television content designed primarily for children in the backseat of vehicles. SIRIUS Backseat TV is available as a factory-installed option in select Chrysler, Dodge and Jeep models, and at retail for aftermarket installation.

*SIRIUS Travel Link.* SIRIUS offers SIRIUS Travel Link, a suite of data services that includes real-time traffic, tabular and graphical weather, fuel prices, sports schedules and scores, and movie listings.

*Real-Time Traffic Services.* Both XM and SIRIUS offer services that provide graphic information as to road closings, traffic flow and incident data to consumers with compatible in-vehicle navigation systems.

*Real-Time Weather Services.* XM and SIRIUS offer several real-time weather services designed for in-vehicle, marine and/or aviation use.

## **FCC Conditions**

In order to demonstrate to the FCC that the Merger was in the public interest, we agreed to implement a number of voluntary commitments. These programming, public interest and qualified entity channels, equipment, subscription rates, and other service commitments are summarized as follows:

### ***Programming***

*A La Carte Programming:* We offer the a la carte programming options described below to consumers with eligible radios:

- 50 channels are available for \$6.99 a month. Additional channels can be added for 25 cents each, with premium programming priced at additional cost. However, in no event will a customer subscribing to this a la carte option pay more than \$12.95 per month for this programming.
- 100 channels, including channels from both services, are available on an a la carte basis for \$14.99 a month.

Our a la carte packages allow subscribers to pick, through interactive menus available on the Internet, the specific channels they would like to receive. We have introduced these packages, including channels from both services, and a radio capable of receiving them.

*“Best of Both” Programming:* We offer customers the ability to receive the best of both SIRIUS and XM programming at a monthly cost of \$16.99.

*Mostly Music or News, Sports and Talk Programming:* We offer customers an option of “mostly music” programming or “mostly news, sports and talk” programming at a cost of \$9.99 per month.

*Discounted Family-Friendly Programming:* We offer consumers a “family-friendly” version of existing SIRIUS or XM programming at a cost of \$11.95 a month, representing a discount of \$1.00 per month. We also offer SIRIUS and XM customers a family-friendly version of the “best of” programming. This programming costs \$14.99 per month, representing a discount of \$2.00 per month from the cost of the “best of” programming.

#### ***Public Interest Channels***

We agreed to set aside four percent of the full-time audio channels on the SIRIUS platform and on the XM platform for non-commercial, educational and informational programming within the meaning of the FCC rules that govern similar obligations of direct broadcast satellite providers. We also committed not to select a programmer to fill more than one non-commercial, educational or informational channel on each of the SIRIUS and XM platforms as long as demand by programming providers for such channels exceeds available supply.

#### ***Qualified Public Entity Channels***

We agreed to enter into long-term leases or other agreements to provide to a Qualified Entity or Entities, defined as an entity or entities that are majority-owned by persons who are African American, not of Hispanic origin; Asian or Pacific Islanders; American Indians or Alaskan Natives; or Hispanics, rights to four percent of the full-time audio channels on the SIRIUS platform and on the XM platform. As digital compression technology enables us to broadcast additional full-time audio channels, we will ensure that four percent of full-time audio channels on the SIRIUS platform and the XM platform are reserved for a Qualified Entity or Entities.

The Qualified Entity or Entities will not be required to make any lease payments for such channels. We will have no editorial control over these channels. The FCC is expected to inform us how it plans to select these Qualified Entities. In February 2009, the FCC commenced a proceeding to determine the method to select these Qualified Entities but has not completed this proceeding. We will implement our commitment to enter into long-term leases or other agreements to provide a Qualified Entity or Entities audio channels on the SIRIUS platform and on the XM platform when the FCC completes its pending proceeding and directs us how to legally implement this requirement.

#### ***Equipment***

We are required to provide, on commercially reasonable terms, our intellectual property necessary to permit any device manufacturer to develop equipment that can deliver our satellite radio services. Chip sets for satellite radios, which include the encryption, conditional access and security technology necessary to access our satellite radio services, may be purchased by licensees from manufacturers in negotiated transactions with such manufacturers. We have agreed not to enter into any agreement that grants, or that would have the effect of granting, a device manufacturer an exclusive right to manufacture, market and sell equipment that can deliver our satellite radio services.

We have also agreed not to execute any agreement or take any other action that would bar, or have the effect of barring, a car manufacturer or other third party from including non-interfering HD radio chips, iPod compatibility, or other audio technology in an automobile or audio device.

#### ***Subscription Rates***

We have agreed not to raise the retail price for, or reduce the number of channels in, our basic \$12.95 per month subscription package, our a la carte programming packages or our new programming packages described above until July 28, 2011. Under the FCC’s order approving the Merger, we may pass through cost increases incurred since the filing of our FCC merger application as a result of statutorily or contractually required payments to the music, recording and publishing industries for the performance of musical works and sound recordings or for device recording fees. Effective July 29, 2009, we began adding a U.S. Music Royalty Fee to subscriber invoices. The U.S. Music Royalty Fee is \$1.98 a month on our base \$12.95 subscriptions and \$.97 for base plans that are eligible for a second radio discount. Subscription packages, such as our “News, Sports and Talk” package, that contain little music are not subject to the U.S. Music Royalty Fee. Amounts collected on account of the U.S. Music Royalty Fee are being used to partially offset payments to the music industry. A summary of the costs passed through pursuant to U.S. Music Royalty Fee is available on our websites.

***Service to Puerto Rico***

We agreed to file an application with the FCC to provide the SIRIUS satellite radio service to the Commonwealth of Puerto Rico using terrestrial repeaters. In 2009, the FCC granted us Special Temporary Authority to operate terrestrial repeaters in Puerto Rico, and in late 2009, we introduced the SIRIUS satellite radio service to the Commonwealth.

***Interoperable Radios***

We agreed to offer for sale an interoperable radio and began offering such radio in early 2009.

***Local Programming and Advertising***

We have committed not to originate local programming or advertising through our repeater networks.

**Transactions between SIRIUS, XM Holdings and XM**

Promptly following the Merger, SIRIUS and XM began to integrate their operations, and agreed to share the costs of certain day-to-day functions. For example, XM transferred its employees to SIRIUS, and SIRIUS, in turn, has agreed to provide various services to both companies necessary to support their business, such as product development, sales, marketing, finance, accounting, information technology, programming, human resources, public relations, investor relations, legal and other general management services. XM and SIRIUS share equally the costs of these employees. SIRIUS and XM also agreed to share programming and rationalize their channel line-ups, and to share equally the costs of certain programming that appears on both platforms. In addition, SIRIUS and XM have agreed to jointly market radios and coordinate rebate and warranty support programs to subscribers who purchase radios at retail or via their websites. In general, SIRIUS and XM share equally the costs of this marketing and sales coordination.

SIRIUS and XM have also sought opportunities to jointly increase revenues. SIRIUS and XM have agreed to offer their respective subscribers programming packages that include “best of” programming from the other service. Each of SIRIUS and XM retains all the respective revenue generated from its respective “best of” programming package. The companies have also made arrangements to have XM radios offered in RadioShack, a retailer that was previously exclusive to SIRIUS.

XM Holdings and XM are operated as unrestricted subsidiaries under the agreements governing SIRIUS’ existing debt. As unrestricted subsidiaries, transactions among the companies are required to comply with various contractual provisions in our respective debt instruments. The agreements between XM and SIRIUS are intended to permit both companies to share in the benefits of the inter-company arrangements in approximately equal proportion. The terms of the agreements between XM and SIRIUS are intended to be no more favorable to one company or the other than those that could be obtained at the time in an arm’s-length dealing with an unaffiliated firm or person.

Certain operations have not yet been integrated in any significant respect. SIRIUS and XM expect to enter into additional arrangements as they continue to integrate their operations and pursue opportunities to realize cost savings and increase revenues.

From time to time, we continue to evaluate options to further integrate SIRIUS and XM by completing either or both of a merger between XM Holdings and XM or a merger between us and XM Holdings and/or XM.

**Competition**

We face significant competition for both listeners and advertisers. In addition to pre-recorded entertainment purchased or playing in cars, homes and using portable players, we compete with the following providers of radio or other audio services:

***Traditional AM/FM Radio***

SIRIUS and XM compete with traditional AM/FM radio. Many traditional radio companies are substantial entities owning large numbers of radio stations or other media properties. The radio broadcasting industry is highly competitive.

Unlike satellite radio, traditional AM/FM radio has had a well established demand for its services and offers free broadcasts paid for by commercial advertising rather than by a subscription fee. Many radio stations offer information programming of a local nature, such as local news and sports. By attracting listeners to their stations, traditional AM/FM radio reduces the likelihood that customers would be willing to pay for our subscription services and by offering free broadcasts they impose limits on what we can charge for our services. Some AM/FM radio stations have reduced the number of commercials per hour, expanded the range of music played on the air and experimented with new formats in order to lure customers away from satellite radio.

### ***HD Radio***

Many radio stations have begun broadcasting digital signals, which have a clarity similar to our signals. These stations do not charge a subscription fee for their digital signals but do generally carry advertising. A group of major broadcast radio networks have created a coalition to jointly market digital radio services. According to this coalition, nearly 2,000 radio stations are currently broadcasting primary signals with HD Radio technology and broadcasting approximately 1,000 new FM multicast channels (HD2/HD3), and manufacturers are marketing and distributing digital receivers. To the extent that traditional AM/FM radio stations adopt digital transmission technology, any competitive advantage that we enjoy over traditional radio because of our clearer digital signal would be lessened. Traditional AM/FM broadcasters are also aggressively entering Internet radio and wireless internet-based distribution arrangements. Approximately 15 automakers have committed to installing HD Radio equipment as either a factory standard or factory option, including Ford, Volkswagen, BMW, Mercedes-Benz, Kia and Hyundai.

### ***Internet Radio***

Internet radio broadcasts have no geographic limitations and can provide listeners with radio programming from around the country and the world. Major media companies and online-only providers, including Clear Channel, CBS, and Pandora, make high fidelity digital streams available through the Internet for free or, in some cases, for a fraction of the cost of a satellite radio subscription. In addition, there has been wide proliferation of mobile Internet enabled smartphones, many of which have the capability of interfacing with vehicles. These smartphones can typically play recorded or cached content and access live Internet radio via browsers or dedicated applications. Internet based radio products have also been announced for vehicles, although their adoption is currently nascent. The past few years have seen a steady increase in the audio quality of Internet radio streams and in the amount of audio content available via the Web, resulting in a steady increase in Internet radio audience metrics. We expect that improvements from higher bandwidths and wider programming selection are likely to continue making Internet radio an increasingly significant competitor in the near future. These services already compete directly with SIRIUS' and XM's Internet offerings and with our home line of products through the use of home stereo media adapters, media-centric PCs, and specialized IP-based audio consoles.

### ***Portable Audio Devices***

The Apple iPod® is a portable digital music player that allows users to download and purchase music through Apple's iTunes® Music Store, as well as convert music on compact disc to digital files. iPod® are compatible with certain car stereos and various home speaker systems, and certain automakers have entered into arrangements with manufacturers of portable media players that are expected to enhance this compatibility. Availability of music in the public MP3 audio standard has been growing in recent years with sound files available on the websites of online music retailers, artists and record labels and through numerous file sharing software programs. In addition, many emerging artists give away their music for free via blogs and other websites in order to increase live event ticket sales, which are often more profitable to emerging artists than music sales. These MP3 files can be played instantly, burned to a compact disc or stored in various portable players available to consumers. Internet-based audio formats are becoming increasingly competitive as quality improves and costs are reduced. In addition, many current generation portable audio devices, such as the iPod touch, also contain WiFi connections enabling direct Internet connections for purchasing additional music or streaming music that is not stored on the local device.

### ***Direct Broadcast Satellite and Cable Audio***

A number of companies provide specialized audio services through either direct broadcast satellite or cable audio systems. These services are targeted to fixed locations, mostly in-home. The radio service offered by direct broadcast satellite and cable audio is often included as part of a package of digital services with video service, and video customers generally do not pay an additional monthly charge for the audio service.

### ***Digital Media Services***

We face increased competition from businesses that deliver or plan to deliver media content through mobile phones and other wireless devices. The audio entertainment marketplace continues to evolve rapidly, with a steady emergence of new media platforms and portable devices that compete with the XM and SIRIUS services now or that could compete with those services in the future.

### ***Traffic News Services***

A number of providers also compete with the XM and SIRIUS traffic services. Clear Channel and Tele Atlas deliver nationwide traffic information for the top 50 markets to in-vehicle navigation systems using RDS/TMC, the radio broadcast standard technology for delivering traffic and travel information to drivers. The in-dash navigation market in which we primarily compete is also being threatened by increasingly capable smartphones that provide advanced navigation functionality, including live traffic. For instance, the Motorola Droid, Google Nexus One, Palm Pre, and Apple iPhone 3GS all include GPS functionality with turn-by-turn navigation—although these services often require more expensive data plans or other fees.

## **Government Regulation**

As operators of a privately owned satellite system, we are regulated by the FCC under the Communications Act of 1934, principally with respect to:

- the licensing of our satellite systems;
- preventing interference with or to other users of radio frequencies; and
- compliance with FCC rules established specifically for U.S. satellites and satellite radio services.

Any assignment or transfer of control of our FCC licenses must be approved by the FCC. The FCC's order approving the Merger requires us to comply with certain voluntary commitments we made as part of the FCC merger proceeding. We believe we comply with those commitments.

In 1997, XM and SIRIUS was each a winning bidder for an FCC license to operate a satellite digital audio radio service and provide other ancillary services. SIRIUS' FCC licenses for its satellites expire in 2017. XM's FCC licenses for its satellites expire in 2013 and 2014. We anticipate that, absent significant misconduct on our part, the FCC will renew our licenses to permit operation of our satellites for their useful lives, and grant a license for any replacement satellites.

SIRIUS has entered into an agreement with Space Systems/Loral to design and construct a sixth satellite. In September 2008, the FCC granted SIRIUS' application to amend its license to add this satellite to the existing SIRIUS satellite constellation.

In some areas with high concentrations of tall buildings, such as urban centers, signals from our satellites may be blocked and reception can be adversely affected. In many of these areas, we have installed terrestrial repeaters to supplement our satellite signal coverage. The FCC has not yet established rules governing terrestrial repeaters. Rulemaking on the subject has been initiated by the FCC and is still pending. Many comments have been filed as part of this and related rulemakings. The comments cover many topics relating to the operation of our terrestrial repeaters, but principally seek to protect adjoining wireless services from interference. We cannot predict the outcome or timing of these FCC proceedings and the final rules adopted by the FCC may limit our ability to deploy additional terrestrial repeaters, require us to reduce the power of our existing terrestrial repeaters or fail to protect us from interference by adjoining spectrum holders. In the interim, the FCC has granted XM and SIRIUS special temporary authority ("STA") to operate their terrestrial repeaters and offer service on a non-harmful interference basis to other wireless services. Following the FCC's review of whether certain repeaters had been operating at variance to the specifications in their STAs, both XM and SIRIUS entered into consent decrees in 2008 requiring both remedial action and a voluntary contribution to the federal government. We believe the repeaters operated by SIRIUS and XM comply with the consent decrees, the STAs and applicable FCC rules.

We design, establish specifications for, source or specify parts and components for, manage various aspects of the logistics and production of, and, in most cases, obtain FCC certifications for, satellite radios, including satellite radios that include FM modulators. Part 15 of the FCC's rules establish a number of requirements relating to FM modulators, including emissions and frequency rules. Following the FCC's review of whether the FM transmitters in certain XM and SIRIUS radios comply with the FCC's emissions and frequency rules, we entered into consent decrees in 2008 requiring both remedial action and a voluntary contribution to the federal government. We believe our radios that are in production comply with the consent decree and applicable FCC rules.

We are required to obtain export licenses from the United States government to deliver components of our satellite radio systems and related technical data thereto. In addition, the delivery of satellites and the supply of related ground control equipment, technical data, and satellite communication/control services to destinations outside the United States and to foreign persons is subject to strict export control and prior approval requirements from the United States government (including prohibitions on the sharing of certain satellite-related goods and services with China).

Changes in law or regulations relating to communications policy or to matters affecting our services could adversely affect our ability to retain our FCC licenses or the manner in which we operate.

## **Copyrights to Programming**

In connection with our music programming, we must negotiate and enter into royalty arrangements with two sets of rights holders: holders of copyrights in musical works (that is, the music and lyrics) and holders of copyrights in sound recordings (that is, the actual recording of a work).

Musical works rights holders, generally songwriters and music publishers, are represented by performing rights organizations such as the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), and SESAC, Inc. ("SESAC"). These organizations negotiate fees with copyright users, collect royalties and distribute them to the rights holders. We have arrangements with all of these organizations.

Sound recording rights holders, typically large record companies, are primarily represented by SoundExchange, an organization which negotiates licenses, and collects and distributes royalties on behalf of record companies and performing artists. Under the Digital Performance Right in Sound Recordings Act of 1995 and the Digital Millennium Copyright Act of 1998, we may negotiate royalty arrangements with the sound recording copyright owners, or if negotiation is unsuccessful, the royalty rate is established by the Copyright Royalty Board (the “CRB”) of the Library of Congress. In January 2008, the CRB issued a decision regarding the royalty rate payable by SIRIUS and XM under the statutory license covering the performance of sound recordings over their satellite radio services for the six-year period starting January 1, 2007 and ending December 31, 2012. Our next rate settling proceeding before the CRB is scheduled to commence in January 2011. Under the terms of the CRB’s decision, we paid a royalty of 6.0%, 6.0% and 6.5% of gross revenues, subject to certain exclusions, for 2007, 2008 and 2009, respectively. Under this decision, we will pay a royalty of 7.0% for 2010, 7.5% for 2011 and 8.0% for 2012.

**Trademarks**

SIRIUS has registered, and intends to maintain, the trademark “SIRIUS” and the “Dog design” logo with the United States Patent and Trademark Office (the “PTO”) in connection with the transmission services offered by it. SIRIUS is not aware of any material claims of infringement or other challenges to its right to use the “SIRIUS” trademark or the “Dog design” logo in the United States. SIRIUS also has registered, and intends to maintain, trademarks for the names of certain of its channels. SIRIUS has also registered the trademark, “SIRIUS”, and the “Dog design” logo, in Canada. SIRIUS has granted a license to use its trademark in Canada to SIRIUS Canada.

XM has registered, and intends to maintain, the trademark “XM” with the PTO in connection with the transmission services offered by it. XM is not aware of any material claims of infringement or other challenges to its right to use the “XM” trademark in the United States. XM also has registered, and intends to maintain, trademarks for the names of certain of its channels. XM has also registered the trademark, “XM”, and the logo, in Canada. XM has granted a license to use its trademark in Canada to XM Canada.

**Personnel**

As of December 31, 2009, we had 1,514 full-time employees. In addition, we rely upon a number of part-time employees, consultants, other advisors and outsourced relationships. None of our employees is represented by a labor union, and we believe that our employee relations are good.

**Corporate Information**

Our executive offices are located at 1221 Avenue of the Americas, 36th floor, New York, New York 10020 and our telephone number is (212) 584-5100. Our internet address is [siriusxm.com](http://siriusxm.com). Our annual, quarterly and current reports, and amendments to those reports, filed or furnished pursuant to Section 14(a) or 15(d) of the Securities Exchange Act of 1934 may be accessed free of charge through our website after we have electronically filed such material with, or furnished it to, the SEC. [siriusxm.com](http://siriusxm.com) (including any other reference to such address in this Annual Report) is an inactive textual reference only, meaning that the information contained on or accessible from the website is not part of this Annual Report on Form 10-K and is not incorporated in this report by reference.

XM Holdings and XM also file and furnish annual, quarterly and current reports, and amendments to those reports, pursuant to the Securities Exchange Act of 1934, and those reports may be accessed free of charge through [xmradio.com](http://xmradio.com) after XM Holdings and XM have electronically filed such material with, or furnished it to, the SEC. [xmradio.com](http://xmradio.com) (including any other reference to such address in this Annual Report) is an inactive textual reference only, meaning that the information contained on or accessible from the website is not part of this Annual Report on Form 10-K and is not incorporated in this report by reference.

**Executive Officers of the Registrant**

Certain information regarding our executive officers is provided below:

<b>Name</b>	<b>Age</b>	<b>Position</b>
Mel Karmazin	66	Chief Executive Officer
Scott A. Greenstein	50	President and Chief Content Officer
James E. Meyer	55	President, Operations and Sales
Dara F. Altman	51	Executive Vice President and Chief Administrative Officer
Patrick L. Donnelly	48	Executive Vice President, General Counsel and Secretary
David J. Frear	53	Executive Vice President and Chief Financial Officer

**Mel Karmazin** 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.

**Scott A. Greenstein** has served as our President and Chief Content Officer since May 2004. Prior to May 2004, Mr. Greenstein was Chief Executive Officer of The Greenstein Group, a media and entertainment consulting firm. From 1999 until 2002, he was Chairman of USA Films, a motion picture production, marketing and distribution company. From 1997 until 1999, Mr. Greenstein was Co-President of October Films, a motion picture production, marketing and distribution company. Prior to joining October Films, Mr. Greenstein was Senior Vice President of Motion Pictures, Music, New Media and Publishing at Miramax Films, and held senior positions at Viacom Inc.

**James E. Meyer** has served as our President, Operations and Sales since May 2004. Prior to May 2004, Mr. Meyer was President of Aegis Ventures Incorporated, a consulting firm that provides general management services. From December 2001 until 2002, Mr. Meyer served as special advisor to the Chairman of Thomson S.A., a leading consumer electronics company. From January 1997 until December 2001, Mr. Meyer served as the Senior Executive Vice President for Thomson as well as the Chief Operating Officer for Thomson Consumer Electronics. From 1992 until 1996, Mr. Meyer served as Thomson's Senior Vice President of Product Management. Mr. Meyer is a director of ROVI Corporation.

**Dara F. Altman** has served as our Executive Vice President and Chief Administrative Officer since September 2008. From January 2006 until September 2008, Ms. Altman served as Executive Vice President, Business and Legal Affairs, of XM. Ms. Altman was Executive Vice President of Business Affairs for Discovery Communications from 1997 to 2005. From 1993 to 1997, Ms. Altman served as Senior Vice President and General Counsel of Reiss Media Enterprises, which owned Request TV, a national pay-per-view service. Before Request TV, Ms. Altman served as counsel for Home Box Office. Ms. Altman started her career as an attorney at the law firm of Willkie, Farr & Gallagher LLP.

**Patrick L. Donnelly** has served as our Executive Vice President, General Counsel and Secretary since May 1998. From June 1997 to May 1998, he was Vice President and deputy general counsel of ITT Corporation, a hotel, gaming and entertainment company that was acquired by Starwood Hotels & Resorts Worldwide, Inc. in February 1998. From October 1995 to June 1997, he was assistant general counsel of ITT Corporation. Prior to October 1995, Mr. Donnelly was an attorney at the law firm of Simpson Thacher & Bartlett LLP.

**David J. Frear** has served as our Executive Vice President and Chief Financial Officer since June 2003. From July 1999 through February 2003, Mr. Frear was Executive Vice President and Chief Financial Officer of Savvis Communications Corporation, a global managed service provider, delivering internet protocol applications for business customers. From October 1999 through February 2003, Mr. Frear also served as a director of Savvis. Mr. Frear was an independent consultant in the telecommunications industry from August 1998 until June 1999. From October 1993 to July 1998, Mr. Frear was Senior Vice President and Chief Financial Officer of Orion Network Systems Inc., an international satellite communications company that was acquired by Loral Space & Communications Ltd. in March 1998. From 1990 to 1993, Mr. Frear was Chief Financial Officer of Millicom Incorporated, a cellular, paging and cable television company. Prior to joining Millicom, he was an investment banker at Bear, Stearns & Co., Inc. and Credit Suisse.

## Employment Agreements

### *Mel Karmazin*

In June 2009, we amended our employment agreement with Mel Karmazin. The amendment (i) extended the term of his employment agreement through December 31, 2012, (ii) increased his base salary from \$1,250,000 per year to \$1,500,000 per year beginning on January 1, 2010, and (iii) provided for the grant of an option to purchase 120,000,000 shares of our common stock, at an exercise price of \$0.430 per share (the closing price of our common stock on the date of the amendment).

These options vest in equal installments on each of December 31, 2010, December 31, 2011, June 30, 2012 and December 31, 2012. The vesting of these stock options accelerate upon the termination of Mr. Karmazin's employment by us without cause, by him for good reason, upon his death or disability and in the event of a change of control. These options will generally expire on December 31, 2014; *provided that* if the parties subsequently agree to extend the term of his employment agreement through December 31, 2013 or later, then the term of these options will automatically extend until the later of (i) December 31, 2015 and (ii) the date that is one year following the date that such new employment agreement expires.

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***

In July 2009, we entered into a new employment agreement with Scott A. Greenstein to continue to serve as our President and Chief Content Officer through July 27, 2013. The employment agreement provides for an annual base salary of \$850,000, with an increase to at least \$925,000 on January 1, 2010; at least \$1,000,000 on January 1, 2011; at least \$1,100,000 on January 1, 2012; and at least \$1,250,000 on January 1, 2013. Mr. Greenstein will also be eligible to receive annual bonuses in an amount determined each year by the Compensation Committee of our board of directors.

In connection with the execution of the employment agreement, we granted Mr. Greenstein an option to purchase 27,768,136 shares of our common stock at an exercise price of \$0.43 per share (the closing price of our common stock on the date of the employment agreement). These options vest in four equal installments on each of July 26, 2010, July 26, 2011, July 26, 2012 and July 26, 2013. The vesting of these stock options will accelerate upon the termination of Mr. Greenstein's employment by us without cause, by him for good reason, and upon his death or disability. These options will generally expire on July 27, 2019, subject to earlier termination following Mr. Greenstein's termination of employment.

If Mr. Greenstein's employment is terminated without cause or he terminates his employment for good reason, subject to an execution of a release of claims, we are obligated to pay him a lump sum payment equal to his then annual salary and the cash value of the bonus last paid or payable to him in respect of the preceding fiscal year and to continue his health and life insurance benefits for one year.

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***

In October 2009, we entered into a new employment agreement with James E. Meyer to continue to serve as our President, Operations and Sales, through May 1, 2013. The employment agreement provides for an initial base salary of \$950,000, with specified increases. The employment agreement also provides for a lump sum severance payment in an amount equal to (1) Mr. Meyer's annual base salary plus, (2) the greater of (x) a bonus equal to 60% of his then annual base salary or (y) the prior year's bonus actually paid to him (the "Designated Amount") in the case of certain qualifying terminations. In the event Mr. Meyer elects to retire in April 2011, he will receive two times the Designated Amount generally in lieu of any other payments under the employment agreement. Our obligation to pay the foregoing amounts are subject to Mr. Meyer's execution of a valid release of claims against us and his compliance with certain restrictive covenants. We have also agreed to indemnify for any excise taxes that may be imposed on him under Section 280G of the Internal Revenue Code.

Upon the expiration of the employment agreement in May 2013 or following his retirement in April 2011, we have agreed to offer Mr. Meyer a one-year consulting agreement for no additional consideration, other than reimbursement of reasonable out-of-pocket expenses associated with the performance of his obligations under the consulting agreement.

In connection with the execution of the employment agreement, we granted Mr. Meyer an option to purchase 25,184,984 shares of our common stock at an exercise price of \$0.5752 per share (the closing sale price of our common stock on date of the employment agreement). The option will generally vest in four equal installments on each of October 14, 2010, October 14, 2011, October 14, 2012 and October 14, 2013, subject to earlier acceleration or termination under certain circumstances.

***Dara F. Altman***

In September 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 \$446,331, 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 a lump sum severance payment, in cash equal to two times the sum of (1) 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 (2) the higher of (a) the last annual bonus actually paid to her and (b) 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. In the event Ms. Altman's employment is terminated without cause or she terminates her employment for good reason, all options to purchase our common stock, restricted stock units or restricted shares of common stock issued by us to her during the term that are held by her on the termination date shall immediately vest. Any such vested stock options shall expire 90 days following the termination. In addition, in the event Ms. Altman's employment is terminated without cause or she terminates her employment for good reason, we are also obligated to continue her medical, dental and life insurance benefits for 24 months following her termination.



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***

In January 2010, we entered into a new employment agreement with Patrick L. Donnelly to continue to serve as our Executive Vice President, General Counsel and Secretary, through January 13, 2014. The employment agreement provides for an initial base salary of \$575,000, with specified increases. 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 then annual salary and the cash value of the bonus last paid or payable to him in respect of the preceding fiscal year and to continue his health and life insurance benefits for one year. Our obligations to pay the foregoing amounts are subject to Mr. Donnelly's execution of a valid release of claims against us and his compliance with certain restrictive covenants. We have also agreed to indemnify Mr. Donnelly for any excise taxes that may be imposed on him under Section 280G of the Internal Revenue Code.

In connection with the execution of the employment agreement, we granted Mr. Donnelly an option to purchase 13,163,495 shares of our common stock at an exercise price of \$0.6669 per share (the last sale price of our common stock on the Nasdaq Global Select Market prior to the execution of the employment agreement). The option will generally vest in four equal installments on each of January 14, 2011, January 14, 2012, January 14, 2013 and January 14, 2014, subject to earlier acceleration or termination under certain circumstances.

***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 the sum of 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.

Additional information regarding the compensation for Messrs. Karmazin, Greenstein, Meyer, Donnelly and Frear and Ms. Altman will be included in our definitive proxy statement for our 2010 annual meeting of stockholders scheduled to be held on Thursday, May 27, 2010.

**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.

## ITEM 1A. RISK FACTORS

*In addition to the other information in this Annual Report on Form 10-K, including the information under the caption "Competition," the following risk factors should be considered carefully in evaluating us and our business. This Annual Report on Form 10-K contains forward-looking statements within the meaning of the federal securities laws. Actual results and the timing of events could differ materially from those projected in forward-looking statements due to a number of factors, including those set forth below and elsewhere in this Annual Report on Form 10-K. See "Special Note Regarding Forward-Looking Statements."*

### **Our business and our financial condition have been adversely affected by general economic conditions.**

The purchase of a satellite radio subscription is discretionary, and we believe that our business and our financial condition have been adversely affected by general economic conditions. In addition, the dramatic slowdown in auto sales negatively impacted our subscriber growth in 2008 and 2009.

### **Demand for our services is difficult to predict.**

We cannot estimate with any certainty whether consumer demand for our services will be sufficient for us to continue to increase the number of subscribers to our services. Our satellite radio services have experienced a decrease in new subscriptions from retail subscribers and most new subscription growth has come from new and used automobiles.

### **Failure of third parties to perform could adversely affect our business.**

Our business depends in part on the efforts of various third parties, including:

- manufacturers that build and distribute satellite radios;
- companies that manufacture and sell integrated circuits for satellite radios;
- programming providers and on-air talent, including Howard Stern;
- retailers that market and sell satellite radios and promote subscriptions to our services; and
- vendors that have designed or built, and vendors that support or operate, important elements of our systems, such as our satellites and customer service facilities.

If one or more of these third parties do not perform in a sufficient or timely manner, our business could be adversely affected. In addition, a number of third parties on which we depend have, and may in the future, experience financial difficulties or file for bankruptcy protection. Such third parties may not be able to perform their obligations to us in a timely manner, if at all, as a result of their financial condition or may be relieved of their obligations to us as part of seeking bankruptcy protection.

We design, establish specifications, source or specify parts and components, and manage various aspects of the logistics and production of radios. As a result of these activities, we may be exposed to liabilities associated with the design, manufacture and distribution of radios that the providers of an entertainment service would not customarily be subject to, such as liabilities for design defects, patent infringement and compliance with applicable laws, as well as the costs of returned product.

### **Programming is an important part of our services, and the costs to renew our programming arrangements may be more than anticipated.**

Third-party content is an important part of our satellite radio services, and we compete with many entities for content. We have entered into a number of important content arrangements, including agreements with the National Football League, Howard Stern and NASCAR, which require us to pay substantial sums. Our agreement with Howard Stern expires in December 2010; our agreement with the NFL expires at the end of the 2010-2011 NFL season; and our agreement with NASCAR expires in December 2011. As these agreements expire, we may not be able to negotiate renewals of one or more of these agreements, or renew such agreements at costs we believe are attractive.

In addition, we may not be able to obtain additional third-party content within the costs contemplated by our business plans.

We employ, or independently contract with, on-air talent who maintain significant loyal audiences in or across various demographic groups. There can be no assurance that this on-air talent will remain with us or that we will be able to retain their respective audiences. If we lose the services of one or more of them, or fail to attract qualified replacement personnel, it could harm our business and future prospects.

### **We must maintain and pay license fees for music rights.**

We must maintain music programming royalty arrangements with, and pay license fees to, BMI, ASCAP and SESAC. These organizations negotiate with copyright users, collect royalties and distribute them to songwriters and music publishers. We have agreements with ASCAP and SESAC through December 2011. We do not have a definitive agreement with BMI, and we continue to operate under an interim agreement with BMI. There can be no assurance that the BMI royalty fee will remain at the current level when the pending agreement is finalized.

Under the Digital Performance Right in Sound Recordings Act of 1995 and the Digital Millennium Copyright Act of 1998, we pay royalties to copyright owners of sound recordings. Those royalty rates may be established through negotiation or, if negotiation is unsuccessful, by the CRB. Our next rate setting proceeding before the CRB is scheduled to commence in January 2011, and, if negotiations prove unsuccessful, these royalty rates may not remain at their current levels following the proceeding.

**Higher than expected costs of attracting new subscribers, higher subscriber turnover or weaker than expected advertising revenue could each adversely affect our financial performance and operating results.**

We are spending substantial funds on advertising and marketing and in transactions with automakers, radio manufacturers, retailers and others to obtain and attract subscribers. If the costs of attracting new subscribers are greater than expected, our financial performance and operating results could be adversely affected.

We are experiencing, and expect to continue to experience, subscriber turnover, or churn. If we are unable to retain our current subscribers, or the costs of retaining subscribers are higher than we expect, our financial performance and operating results could be adversely affected. We cannot predict how successful we will be at retaining customers who purchase or lease vehicles that include a subscription to their satellite radio services. During 2009, we converted approximately 45.4% of the customers who received a promotional subscription as part of the purchase or lease of a new vehicle to a self-paying subscription. Over the same period, we have experienced churn of our self-pay subscribers of approximately 2.03% per month.

We cannot predict the amount of churn we will experience over the longer term. Our inability to retain customers who either purchase or lease new vehicles with our services beyond the promotional period, or who purchase or lease a new vehicle that includes a prepaid subscription to our services, and self-pay subscriber churn could adversely affect our financial performance and results of operations.

Our ability to generate advertising revenues is directly affected by general economic conditions, the number of subscribers to our services and the amount of time subscribers spend listening to the talk and entertainment channels or the traffic and weather services. General economic conditions are affecting our ad revenues. Our ability to generate advertising revenues also depends on several factors, including the level and type of penetration of our services, competition for advertising dollars from other media, and changes in the advertising industry and the economy generally. We directly compete for audiences and advertising revenues with traditional AM/FM radio stations and other media, some of which maintain longstanding relationships with advertisers.

**We may from time to time modify our business plan, and these changes could adversely affect us and our financial condition.**

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. These changes in our plans or strategy may include: the acquisition or termination 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, including acquisitions that are not directly related to our satellite radio business.

**Our substantial indebtedness could adversely affect our ability to raise additional capital to fund our operations and could limit our ability to react to changes in the economy or our industry.**

As of December 31, 2009, we had an aggregate principal amount of approximately \$3.1 billion of indebtedness. Our substantial indebtedness has important consequences. For example, it:

- increases our vulnerability to general adverse economic and industry conditions;
- requires us to dedicate a substantial portion of our cash flow from operations to payments on indebtedness, reducing the availability of cash flow to fund working capital, capital expenditures and other general corporate activities;
- limits our ability to borrow additional funds or make capital expenditure;
- limits our flexibility in planning for, or reacting to, changes in our business and the audio entertainment industry; and
- may place us at a competitive disadvantage compared to other competitors.

A substantial portion of our cash flows from operations is dedicated to the payment of principal and interest on our indebtedness and will not be available for other purposes, including our operations, capital expenditures, investments in new technologies and future business opportunities.

The instruments governing our indebtedness contain covenants that, among other things, restrict our ability to incur more debt, pay dividends, make distributions, make certain investments, repurchase stock, create liens, enter into transactions with affiliates, enter into sale lease-back transactions, merge or consolidate, and transfer or sell assets. Failure to comply with the covenants contained in the indentures and agreements governing this debt could result in an event of default, which, if not cured or waived, could cause us to seek the protection of the bankruptcy laws, discontinue operations or seek a purchaser for our business or assets.

**Our business might never become profitable.**

As of December 31, 2009, we had an accumulated deficit of approximately \$10.2 billion. We expect our cumulative net losses to grow as we make payments under various contracts, incur marketing and subscriber acquisition costs and make interest payments on existing debt. As of December 31, 2009, we had total debt of approximately \$3.1 billion. If we are unable ultimately to consistently generate sufficient revenues to become profitable, we may not be able to make the required payments on our indebtedness and could ultimately default on our commitments.

**Our business depends in large part upon automakers, a number of whom have experienced a sharp decline in sales, have reduced production and are experiencing extreme financial difficulties.**

The sale and lease of vehicles with satellite radios is an important source of subscribers for our satellite radio services. We have agreements with every major automaker to include satellite radios in new vehicles, although these agreements do not require automakers to install specific or minimum quantities of radios in any given period. Economic conditions, particularly the dramatic slowdown in auto sales, negatively impacted subscriber growth for our services in 2008 and 2009.

Our subscription growth is dependent, in large part, on sales and vehicle production by automakers. Automotive sales and production are dependent on many factors, including the availability of consumer credit, general economic conditions, consumer confidence and fuel costs. To the extent vehicle sales by automakers continue to decline, or the penetration of factory-installed satellite radios in those vehicles is reduced, and there is no offsetting growth in vehicle sales or increased penetration by other automakers, subscriber growth for our satellite radio services will be adversely impacted.

**Rapid technological and industry changes could adversely impact our services.**

The audio entertainment industry is characterized by rapid technological change, frequent new product innovations, changes in customer requirements and expectations, and evolving standards. If we are unable to keep pace with these changes, our business may be unsuccessful. Products using new technologies, or emerging industry standards, could make our technologies less competitive in the marketplace.

**Consumers could pirate our services.**

Individuals who engage in piracy may be able to obtain or rebroadcast our satellite radio service or access the internet transmission of our services without paying the subscription fee. Although we use encryption technologies to mitigate the risk of signal theft, such technologies may not be adequate to prevent theft of the signals. If signal theft becomes widespread, it could harm our business.

**Failure of our satellites would significantly damage our business and potential satellite losses may not be covered by insurance.**

We operate eight in-orbit satellites, four supporting the SIRIUS service and four supporting the XM service, including two satellites that are used for backup purposes only. The useful lives of these satellites will vary and depend on a number of factors, including:

- degradation and durability of solar panels;
- quality of construction;
- random failure of satellite components, which could result in significant damage to or loss of a satellite;
- amount of fuel the satellites consume; and
- damage or destruction by electrostatic storms or collisions with other objects in space.

Three of SIRIUS' orbiting satellites were launched in 2000; the fourth satellite was launched in 2009. We currently estimate that two of SIRIUS' initial in-orbit satellites will have a 13-year operational life from the time of launch and the other orbiting SIRIUS satellites will each have a 15-year operational life from the time of launch. SIRIUS' operating results would be materially adversely affected if the useful life of its satellites is significantly shorter than expected, whether as a result of a satellite failure or technical obsolescence, and SIRIUS does not launch replacement satellites in a timely manner.

Three of the SIRIUS in-orbit satellites have experienced circuit failures on their solar arrays. The circuit failures these satellites have experienced do not affect current operations. Additional circuit failures on the first three SIRIUS satellites could reduce the estimated useful lives of those satellites.

If two or more of the SIRIUS satellites fail in orbit in close proximity in time, the SIRIUS service could be suspended until replacement satellites are launched and placed into service. In such event, SIRIUS' business would be materially impacted and it could default on its commitments.

SIRIUS has entered into an agreement with Space Systems/Loral to design and construct a new satellite which is expected to be launched in the fourth quarter of 2011. Satellite launches have significant risks, including launch failure, damage or destruction of the satellite during launch and failure to achieve a proper orbit or operate as planned. SIRIUS' agreement with Space Systems/Loral does not protect it against the risks inherent in a satellite launch or in-orbit operations.

XM placed its XM-3 and XM-4 satellites into service during the second quarter of 2005 and during the fourth quarter of 2006, respectively. XM's XM-1 and XM-2 satellites experienced progressive degradation problems common to early Boeing 702 class satellites and now serve as in-orbit spares. We estimate that the XM-3 and XM-4 satellites will meet their 15-year predicted useful lives, and that XM-1 and XM-2 satellites' useful lives will end in 2011. An operational failure or loss of XM-3 or XM-4 would, at least temporarily, affect the quality of XM's service, and could interrupt the continuation of its service and harm its business. We expect to launch the XM-5 satellite, which will serve as an in-orbit spare for the SIRIUS and XM services, in the third quarter of 2010. In the event of any satellite failure prior to that time, XM would need to rely on its back-up satellites, XM-1 and XM-2. There can be no assurance that restoring service through XM-1 and XM-2 would allow XM to maintain adequate broadcast signal strength through the date on which XM-5 is brought into service, particularly if XM-1 or XM-2 were to suffer unanticipated additional performance degradation or experience an operational failure.

In addition, SIRIUS' network of terrestrial repeaters communicates with one third-party satellite and XM's network of terrestrial repeaters communicates with one XM satellite. If the satellites communicating with the SIRIUS or XM repeater network fail unexpectedly, the services would be disrupted for several hours or longer.

In the ordinary course of operation, satellites experience failures of component parts and operational and performance anomalies. Components on our in-orbit satellites have failed and from time to time we have experienced anomalies in the operation and performance of these satellites. These failures and anomalies are expected to continue in the ordinary course, and we cannot predict if any of these future events will have a material adverse effect on our operations or the useful life of our existing in-orbit satellites.

We do not maintain in-orbit insurance policies covering three of the four satellites broadcasting the SIRIUS service. We maintain in-orbit insurance covering our primary satellites broadcasting the XM service, but do not maintain insurance on the XM back-up satellites.

Any insurance proceeds will not fully cover our losses in the event of a satellite failure or significant degradation. For example, the policies covering the insured satellites do not cover the full cost of constructing, launching and insuring new satellites or XM's in-orbit spare satellites, nor will they cover, and SIRIUS and XM do not have protection against, business interruption, loss of business or similar losses. Our insurance contains customary exclusions, material change and other conditions that could limit recovery under those policies. Further, any insurance proceeds may not be received on a timely basis in order to launch a spare satellite or construct and launch a replacement satellite or take other remedial measures. In addition, the policies are subject to limitations involving uninsured losses, large satellite performance deductibles and policy limits that may not be sufficient to cover losses.

**Our broadcast studios, terrestrial repeater networks, satellite uplink facilities or other ground facilities could be damaged by natural catastrophes or terrorist activities.**

An earthquake, tornado, flood, terrorist attack or other catastrophic event could damage our broadcast studios, terrestrial repeater networks or satellite uplink facilities, interrupt the SIRIUS or XM service and harm our business. We do not have replacement or redundant facilities that can be used to assume the functions of their terrestrial repeater networks. We do have redundant facilities that can be used to assume immediately many of the functions of the broadcast studios and satellite uplink facilities in the event of a catastrophic event.

Any damage to the satellites that transmit to the SIRIUS or XM terrestrial repeater network would likely result in degradation of the affected company's service for some subscribers and could result in complete loss of service in certain or all areas. Damage to our satellite uplink facilities could result in a complete loss of either the XM or SIRIUS service until the affected company could transfer its operations to its respective back-up facilities.

**Electromagnetic interference from others could damage our business.**

Our satellite radio service may be subject to interference caused by other users of radio frequencies, such as Wireless Communications Service ("WCS") users. The FCC is seeking comment on proposals by certain WCS licensees for modification of rules regarding their operations in spectrum adjacent to satellite radio, including rule changes to facilitate mobile broadband services in the WCS frequencies. We are participating actively in this proceeding and have opposed the changes requested by WCS licensees out of a concern for their impact on the reception of satellite radio service. We cannot predict the outcome of the FCC proceeding, or the impact on satellite radio reception.

**Failure to comply with FCC requirements could damage our business.**

We hold FCC licenses and authorizations to operate commercial satellite radio services in the United States, including authorizations for satellites and terrestrial repeaters, and related authorizations. The FCC generally grants licenses and authorizations for a fixed term. Although we expect our licenses and authorizations to be renewed in the ordinary course upon their expiration, there can be no assurance that this will be the case. Any assignment or transfer of control of any of our FCC licenses or authorizations must be approved in advance by the FCC.

The operation of our satellite radio systems is subject to significant regulation by the FCC under authority granted through the Communications Act and related federal law. We are required, among other things, to operate only within specified frequencies; to meet certain conditions regarding the interoperability of our satellite radios with those of other licensed satellite radio systems; to coordinate our satellite radio services with radio systems operating in the same range of frequencies in neighboring countries; and to coordinate our communications links to our satellites with other systems that operate in the same frequency band. Non-compliance by us with these requirements or other conditions or with other applicable FCC rules and regulations could result in fines, additional license conditions, license revocation or other detrimental FCC actions. There is no guarantee that Congress will not modify the statutory framework governing our services, or that the FCC will not modify its rules and regulations in a manner that would have a material impact on our operations.

The terms of our licenses, the order of the FCC approving the Merger, and the consent decrees we entered into with the FCC require us to meet certain conditions. We have agreed to implement a number of voluntary commitments, including programming, a la carte, minority and public interest, equipment, subscription rates and other service commitments. Non-compliance with these conditions could result in fines, additional license conditions, license revocation or other detrimental FCC actions.

The FCC has not yet issued final rules permitting us to operate and deploy terrestrial repeaters to fill gaps in our satellite coverage. We are operating the SIRIUS and XM terrestrial repeaters on a “non-interference” basis pursuant to grants of special temporary authority from the FCC. The FCC’s final terrestrial repeater rules may require us to reduce the power of our terrestrial repeaters or limit our ability to deploy additional repeaters. If the FCC requires us to reduce significantly the number or power of our terrestrial repeaters, this would have an adverse effect on the quality of our service in certain markets and/or cause us to alter our terrestrial repeater infrastructure at a substantial cost. If the FCC limits our ability to deploy additional terrestrial repeaters, our ability to improve any deficiencies in our service quality that may be identified in the future would be adversely affected.

**Changes in consumer protection laws and their enforcement could damage our business.**

We engage in extensive marketing efforts to attract and retain subscribers to our services. We employ a wide variety of communications tools as part of our marketing campaigns, including print, television, radio and online advertising; telemarketing efforts; and email solicitations. The United States Federal Trade Commission, the FCC and various states agencies have responsibility for consumer protection and have jurisdiction over components of our consumer marketing efforts.

Consumer protection laws, rules and regulations are extensive and have developed rapidly. Consumer protection laws in certain jurisdictions cover nearly all aspects of our marketing efforts, including the content of our advertising, the terms of consumer offers and the manner in which we communicate with subscribers and prospective subscribers. We are engaged in considerable efforts to ensure that all our activities comply with federal and state laws, rules and regulations relating to consumer protection. Modifications to federal and state laws, rules and regulations concerning consumer protection, including decisions by federal and state courts and agencies interpreting these laws, could have an adverse impact on our ability to attract and retain subscribers to our services. While we monitor the changes in and interpretations of these laws in consumer-related settlements and decisions, and while we believe that we are in material compliance with applicable laws, there can be no assurances that new laws or regulations will not be enacted or adopted, or preexisting laws or regulations will not be more strictly enforced, which might adversely affect our operations.

**The unfavorable outcome of pending or future litigation could have a material adverse effect.**

We are parties to several legal proceedings arising out of various aspects of our business. We are defending all claims against us. The outcome of these proceedings may not be favorable, and an unfavorable outcome may have a material adverse effect on our business or financial results.

**Our business may be impaired by third-party intellectual property rights.**

Development of the XM and SIRIUS systems has depended upon the intellectual property that we have developed, as well as intellectual property licensed from third parties. If the intellectual property that we have developed or use is not adequately protected, others will be permitted to and may duplicate portions of our satellite radio systems or services without liability. In addition, others may challenge, invalidate, render unenforceable or circumvent our intellectual property rights, patents or existing sublicenses or we may face significant legal costs in connection with defending and enforcing those intellectual property rights. Some of the know-how and technology we have developed, and plan to develop, is not now, nor will it be, covered by U.S. patents or trade secret protections. Trade secret protection and contractual agreements may not provide adequate protection if there is any unauthorized use or disclosure. The loss of necessary technologies could require us to obtain substitute technology of lower quality performance standards, at greater cost or on a delayed basis, which could harm us.

Other parties may have patents or pending patent applications, which will later mature into patents or inventions that may block our ability to operate the SIRIUS or XM system or license technologies. We may have to resort to litigation to enforce our rights under license agreements or to determine the scope and validity of other parties' proprietary rights in the subject matter of those licenses. This may be expensive. Also, we may not succeed in any such litigation.

Third parties may assert claims or bring suit against us for patent, trademark or copyright infringement, or for other infringement or misappropriation of intellectual property rights. Any such litigation could result in substantial cost, and diversion of effort and adverse findings in any proceeding could subject us to significant liabilities to third parties; require us to seek licenses from third parties; block our ability to operate our systems or license our technology; or otherwise adversely affect our ability to successfully develop and market our satellite radio systems.

**Liberty Media Corporation has significant influence over our business and affairs and its interests may differ from ours.**

Liberty Media Corporation holds preferred stock that is convertible into approximately 40% of the issued and outstanding shares of our common stock. Pursuant to the terms of the preferred stock held by Liberty Media we cannot take certain actions, such as certain issuances of equity or debt securities, without the consent of Liberty Media. Additionally, Liberty Media has the right to designate six members of our fifteen-member board of directors. As a result, Liberty Media has significant influence over our business and affairs. The interests of Liberty Media may differ from our interests. The extent of Liberty Media's stock ownership in us also may have the effect of discouraging offers to acquire control of us.

**Our net operating loss carryforwards could be substantially limited if we experience an ownership change as defined in the Internal Revenue Code.**

We have generated a federal net operating loss carryforward of approximately \$8 billion through the year ended December 31, 2009, and we may generate net operating loss carryforwards in future years.

Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), contains rules that limit the ability of a company that undergoes an ownership change, which is generally any change in ownership of more than 50% of its stock over a three-year period, to utilize its net operating loss carryforwards and certain built-in losses recognized in years after the ownership change. These rules generally operate by focusing on ownership changes among stockholders owning directly or indirectly 5% or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company.

If we undergo an ownership change for purposes of Section 382 as a result of future transactions involving our common stock, including purchases or sales of stock between 5% stockholders, our ability to use our net operating loss carryforwards and to recognize certain built-in losses would be subject to the limitations of Section 382. Depending on the resulting limitation, a significant portion of our net operating loss carryforwards could expire before we would be able to use them. Our inability to utilize our net operating loss carryforwards could have a negative impact on our long-term financial position and results of operations.

In April 2009, our board of directors adopted a shareholder rights plan designed to preserve shareholder value and the value of certain tax assets primarily associated with net operating loss carryforwards and built-in losses under Section 382 of the Code. We have agreed to submit this shareholder rights plan to a vote of our stockholders. If our stockholders do not approve this shareholder rights plan prior to June 30, 2010 it will terminate in accordance with its terms.

**Our stockholders have approved a reverse stock split, and a reverse stock split could have certain adverse effects.**

On September 15, 2009, we received notice from the Nasdaq Stock Market that our common stock had closed below \$1.00 per share for 30 consecutive business days and was therefore not in compliance with the Nasdaq Marketplace Rules. We may regain compliance if at any time by March 15, 2010 our common stock closes at or above \$1.00 for 10 consecutive business days. The closing price of our common stock on February 23, 2010 was \$1.12. However, we cannot assure you that our common stock will close at or above \$1.00 for 10 consecutive business days by March 15, 2010.

In December 2008 and May 2009, our stockholders approved 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. Our board of directors has authority to select an exchange ratio within the approved range at any time prior to June 30, 2010. Our board of directors intends to effect the reverse stock split only if it determines the reverse split to be in the best interests of the company and its stockholders.

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A reverse stock split could have certain adverse consequences, including:

- 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.
- 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.
- 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 may 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.
- 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. As a result, the ownership interest in the company of certain small stockholders could be terminated.

### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.



**ITEM 2. PROPERTIES**

Below is a list of the principal properties that we own or lease:

<b>Location</b>	<b>Purpose</b>	<b>Own/Lease</b>
New York, NY	Corporate headquarters and studio/production facilities	Lease
New York, NY	Office facilities	Lease
Washington, DC	Office and studio/production facilities	Own
Washington, DC	Office facilities and data center	Own
Lawrenceville, NJ	Office and technical/engineering facilities	Lease
Deerfield Beach, FL	Office and technical/engineering facilities	Lease
New York, NY	Studio/production facilities @ Jazz at Lincoln Center	Lease
Farmington Hills, MI	Office and technical/engineering facilities	Lease
Nashville, TN	Studio/production facility	Lease
Vernon, NJ	Technical/engineering facilities	Own
Ellenwood, GA	Technical/engineering facilities	Lease

We also own or lease other small facilities that we use as offices for our advertising sales personnel, studios and warehouse and maintenance space. These facilities are not material to our business or operations. We also lease properties in Panama and Ecuador that we use as earth stations to command and control the SIRIUS satellites.

In addition, we lease space at approximately 1,000 locations for use in connection with the terrestrial repeater networks that support the XM and SIRIUS services. In general, these leases are for space on building rooftops and communications towers. None of these individual leases is material to our business or operations.

**ITEM 3. LEGAL PROCEEDINGS**

*FCC Merger Order.* On July 25, 2008, the FCC adopted an order approving the Merger. In September 2008, Mt. Wilson FM Broadcasters, Inc. filed a Petition for Reconsideration of the FCC’s merger order. This Petition for Reconsideration remains pending.

*Advanced Recording Functionality Disputes/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.* Commencing in May 2006, holders of copyrights in sound recordings and holders of copyrights in musical works brought, or threatened to bring, actions against SIRIUS and XM in connection with the advanced recording functionality included in the XM Inno, the XM NeXus, the XM Helix, the XM SkyFi3, the SIRIUS S50 and the SIRIUS Stiletto line of radios. The plaintiffs brought this action in the United States District Court for the Southern District of New York, seeking monetary damages and equitable relief.

XM has settled these claims with the major record companies and a significant number of music publishers. XM is in discussions to settle these claims with certain independent record companies and other music publishers.

Prior to introducing retail sales of devices with advanced recording functionality, SIRIUS entered into agreements with the major recording companies concerning such devices. SIRIUS is in discussions to settle the remaining claims with certain independent record companies and music publishers.

SIRIUS and XM believe that the distribution and use of their products do not violate applicable copyright laws. There can be no assurance regarding the ultimate outcome of these matters and settlement discussions, 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 subscribers, both on behalf of themselves and on a class action basis; former employees; parties to contracts or leases; and owners of patents, trademarks, copyrights or other intellectual property. None of these actions are, in our opinion, likely to have a material adverse effect on our cash flows, financial position or results of operations.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

**PART II**

**ITEM 5. 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:

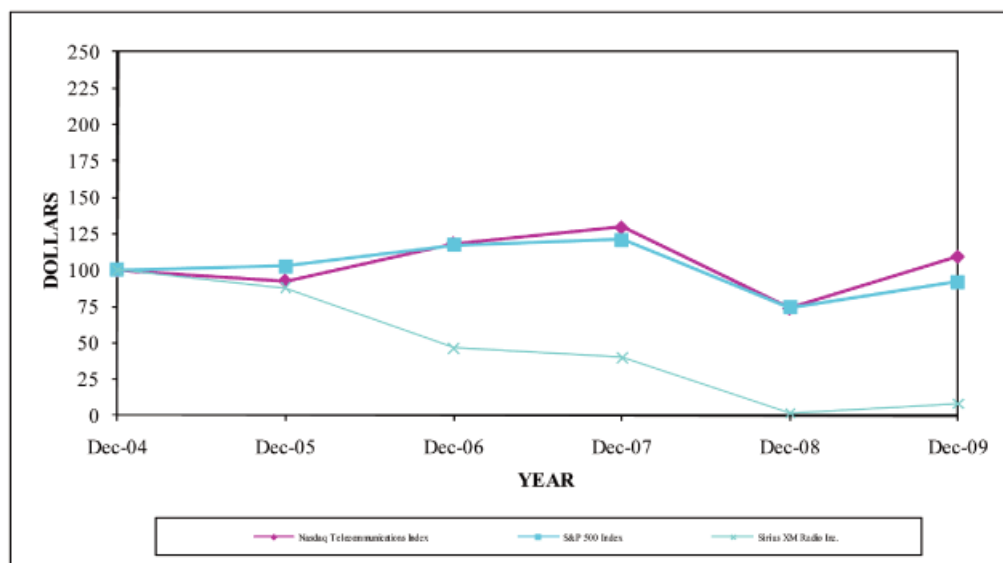
	<u>High</u>	<u>Low</u>
<b>Year ended December 31, 2008</b>		
First Quarter	\$ 3.89	\$ 2.51
Second Quarter	2.92	1.80
Third Quarter	2.75	0.57
Fourth Quarter	0.69	0.08
<b>Year ended December 31, 2009</b>		
First Quarter	\$ 0.43	\$ 0.05
Second Quarter	0.63	0.30
Third Quarter	0.78	0.35
Fourth Quarter	0.69	0.51

On February 23, 2010, the closing sales price of our common stock on the Nasdaq Global Select Market was \$1.12 per share. On February 23, 2010, there were approximately 935,000 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, 2004 to December 31, 2009. The graph assumes that \$100 was invested on December 31, 2004 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, 2004	\$	100.00	\$ 100.00	\$ 100.00
December 31, 2005	\$	92.79	\$ 103.00	\$ 87.93
December 31, 2006	\$	118.55	\$ 117.03	\$ 46.46
December 31, 2007	\$	129.42	\$ 121.16	\$ 39.76
December 31, 2008	\$	73.79	\$ 74.53	\$ 1.57
December 31, 2009	\$	109.39	\$ 92.01	\$ 7.87

**Equity Compensation Plan Information**

<i>(shares in thousands)</i> <b>Plan category</b>	<b>Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)</b>	<b>Weighted-average exercise price of outstanding options, warrants and rights (b)</b>	<b>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)</b>
Equity compensation plans approved by security holders	364,792	\$ 1.44	274,425
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>364,792</b>	<b>\$ 1.44</b>	<b>274,425</b>

**ITEM 6. SELECTED FINANCIAL DATA**

Our selected financial data set forth below with respect to the consolidated statements of operations for the years ended December 31, 2009, 2008 and 2007, and with respect to the consolidated balance sheets at December 31, 2009 and 2008, are derived from our audited consolidated financial statements included in Item 8 of this Annual Report on Form 10-K. Our selected financial data set forth below with respect to the consolidated statements of operations for the years ended December 31, 2006 and 2005, and with respect to the consolidated balance sheets at December 31, 2007, 2006 and 2005 are derived from our audited consolidated financial statements, which are not included in this Annual Report on Form 10-K. This selected financial data should be read in conjunction with the Consolidated Financial Statements and related notes thereto included in Item 8 of this Annual Report on Form 10-K and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

<i>(in thousands, except per share data)</i>	<b>For the Years Ended December 31,</b>				
	<b>2009</b>	<b>2008(1)</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>
<b>Statements of Operations Data:</b>					
Total revenue	\$ 2,472,638	\$ 1,663,992	\$ 922,066	\$ 637,235	\$ 242,245
Net loss	(342,790)	(5,313,288)	(565,252)	(1,104,867)	(862,997)
Net loss per share (basic and diluted)	\$ (0.15)	\$ (2.45)	\$ (0.39)	\$ (0.79)	\$ (0.65)
Weighted average common shares outstanding (basic and diluted)	3,585,864	2,169,489	1,462,967	1,402,619	1,325,739
<b>Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 383,489	\$ 380,446	\$ 438,820	\$ 393,421	\$ 762,007
Restricted investments	3,400	141,250	53,000	77,850	107,615
Total assets	7,263,528	7,459,736	1,687,231	1,650,147	2,075,519
Long-term debt, net of current portion	3,062,693	2,820,781	1,271,699	1,059,868	1,074,594
Stockholders’ equity (deficit) (2)	37,432	8,537	(792,737)	(389,071)	324,968

(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.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*This Annual Report on Form 10-K contains forward-looking statements within the meaning of the federal securities laws. Actual results and the timing of events could differ materially from those projected in forward-looking statements due to a number of factors, including those described under "Item 1A — Risk Factors" and elsewhere in this Annual Report. See "Special Note Regarding Forward-Looking Statements."*

*(All dollar amounts referenced in this Item 7 are in thousands, unless otherwise stated)*

### Executive Summary

We broadcast our music, sports, news, talk, entertainment, traffic and weather channels in the United States on a subscription fee basis 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 four in-orbit satellites, over 125 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. The XM system consists of four in-orbit satellites, over 650 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, including through an application on the Apple iPhone.

Our satellite radios are primarily distributed through automakers ("OEMs"); nationwide through 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.

As of December 31, 2009, we had 18,772,758 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 and dealers for prepaid subscriptions included in the sale or lease price of a vehicle; certain radios activated for daily rental fleet programs; certain subscribers to SIRIUS Internet Radio and XM Radio Online, 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. We also derive revenue from activation and other fees, the sale of advertising on select non-music channels, the direct sale of satellite radios, components 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 and Actual Information

Our discussion of our unaudited pro forma information includes non-GAAP financial results that assume the Merger occurred on January 1, 2007. These financial results exclude the impact of purchase price accounting adjustments and refinancing transactions related to the Merger. The discussion also includes the following non-GAAP financial measures: average self-pay monthly 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 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 50 through 63) following our discussion of results of operations for the definitions and a further discussion of the usefulness of such non-GAAP financial information and reconciliation to GAAP.

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*Unaudited Actual and Pro Forma Subscribers and Metrics.* The following tables contain our actual and pro forma subscriber and key operating metrics for the three months and three years ended December 31, 2009, 2008 and 2007, respectively:

	<b>Unaudited</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
	<b>(Actual)</b>	<b>(Actual)</b>	<b>(Pro Forma)</b>
Beginning subscribers	18,515,730	18,920,911	16,234,070
Gross subscriber additions	1,882,950	1,713,210	2,336,640
Deactivated subscribers	(1,625,922)	(1,630,265)	(1,222,088)
Net additions	<u>257,028</u>	<u>82,945</u>	<u>1,114,552</u>
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>17,348,622</u>
Retail	7,725,750	8,905,087	9,238,715
OEM	10,930,952	9,995,953	8,033,268
Rental	116,056	102,816	76,639
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>17,348,622</u>
Retail	(200,154)	(131,333)	314,908
OEM	442,422	218,249	791,356
Rental	14,760	(3,971)	8,288
Net additions	<u>257,028</u>	<u>82,945</u>	<u>1,114,552</u>
Self-pay	15,703,932	15,549,657	13,873,346
Paid promotional	3,068,826	3,454,199	3,475,276
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>17,348,622</u>
Self-pay	247,182	359,069	822,326
Paid promotional	9,846	(276,124)	292,226
Net additions	<u>257,028</u>	<u>82,945</u>	<u>1,114,552</u>
Daily weighted average number of subscribers	<u>18,576,151</u>	<u>18,910,689</u>	<u>16,629,079</u>

	<b>Unaudited Pro Forma</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Average self-pay monthly churn (1)(7)	2.0%	1.8%	1.7%
Conversion rate (2)(7)	46.4%	44.2%	51.4%
ARPU (3)(7)	\$ 10.92	\$ 10.65	\$ 10.47
SAC, as adjusted, per gross subscriber addition (4)(7)	\$ 64	\$ 70	\$ 83
Customer service and billing expenses, as adjusted, per average subscriber (5)(7)	\$ 1.06	\$ 1.18	\$ 1.30
Total revenue	\$ 683,779	\$ 644,108	\$ 557,515
Free cash flow (6)(7)	\$ 149,547	\$ 25,877	\$ 5,405
Adjusted income (loss) from operations (8)	\$ 115,339	\$ 31,797	\$ (224,143)
Net loss	\$ (25,243)	\$ (248,468)	\$ (405,041)

Note: See pages 50 through 63 for footnotes.

*Subscribers.* At December 31, 2009, we had 18,772,758 subscribers, a decrease of 231,098 subscribers, or 1%, from the 19,003,856 subscribers as of December 31, 2008. Net subscriber additions increased 174,083, or 210%, in the three months ended December 31, 2009 compared to 2008. Net subscriber additions in our OEM channel increased 224,173, or 103%, in the three months ended December 31, 2009 compared to 2008. Net subscriber additions in our retail channel decreased 68,821, or 52%, in the three months ended December 31, 2009 compared to 2008. Deactivation rates for self-pay subscriptions in the quarter increased to 2.0% per month reflecting reductions in consumer discretionary spending, subscriber response to our increase in prices for multi-subscription accounts, channel line-up changes in 2008, the institution of a monthly charge for our upgraded streaming service and the introduction of the U.S. Music Royalty Fee.

We ended the fourth quarter 2008 with 19,003,856 subscribers, an increase of 1,655,234 subscribers, or 10%, from the 17,348,622 subscribers as of December 31, 2007. Net subscriber additions decreased 1,031,607, or 93%, in the three months ended December 31, 2008 compared to 2007. Net additions in our OEM channel decreased 573,107, or 72%, in the three months ended December 31, 2008 compared to 2007. Net subscriber additions in our retail channel decreased 446,241, or 142%, in the three months ended December 31, 2008 compared to 2007. Deactivation rates for self-pay subscriptions in the quarter increased slightly to 1.8% per month.

*ARPU.* 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. See accompanying footnotes for more details. For the three months ended December 31, 2009 and 2008, total ARPU was \$10.92 and \$10.65, respectively. The increase was driven mainly by the sale of “Best of” programming, increased rates on our multi-subscription packages and revenues earned on our internet packages, partially offset by lower advertising revenue.

For the three months ended December 31, 2008 and 2007, total ARPU was \$10.65 and \$10.47, respectively. The increase was driven by the start of our “Best of” package sales and by lower OEM inventories. These factors were partially offset by an increase in the mix of discounted OEM promotional trials, subscriber win-back 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 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. See accompanying footnotes for more details. For the three months ended December 31, 2009 and 2008, SAC, as adjusted, per gross subscriber addition was \$64 and \$70, respectively. The decrease in SAC was primarily due to lower OEM subsidies, lower chip set costs and lower aftermarket acquisition costs, partially offset by higher aftermarket inventory related charges compared to the three months ended December 31, 2008.

For the three months ended December 31, 2008 and 2007, SAC, as adjusted, per gross subscriber addition was \$70 and \$83, 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 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. See accompanying footnotes for more details. For the three months ended December 31, 2009 and 2008, customer service and billing expenses, as adjusted, per average subscriber was \$1.06 and \$1.18, respectively. The decline was primarily due to decreases in personnel costs and customer call center expenses.

For the three months ended December 31, 2008 and 2007, Customer service and billing expenses, as adjusted, per average subscriber was \$1.18 and \$1.30, respectively. The decline was primarily due to efficiencies across a larger subscriber base.

*Adjusted Income (Loss) from Operations.* We refer to net income (loss) before interest and investment income; interest expense, net of amounts capitalized; income tax expense; loss on extinguishment of debt and credit facilities, net; (gain) loss on investments; other expense (income); restructuring, impairments and related costs; depreciation and amortization; and share-based payment expense as adjusted income (loss) from operations. See accompanying footnotes for more details. For the three months ended December 31, 2009 and 2008, our adjusted income (loss) from operations was \$115,339 and \$31,797, respectively. Adjusted income (loss) from operations was favorably impacted by an increase of 6%, or \$39,671, in revenues and a decrease of 7%, or \$43,871, in total expenses included in adjusted income (loss) from operations. The increase in revenue was due mainly to increased rates on multi-subscription packages, revenues earned on internet packages, the introduction of the U.S. Music Royalty Fee and the sale of “Best of” programming, partially offset by decreased equipment revenue. The decreases in expenses were primarily driven by lower subscriber acquisition costs, lower customer service and billing expense, savings in programming and content expenses, and lower legal and consulting costs in general and administrative expenses.

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For the three months ended December 31, 2008 and 2007, our adjusted income (loss) from operations was \$31,797 and (\$224,143), respectively. Adjusted income (loss) from operations was favorably impacted by an increase of 16%, or \$86,593, in revenues and a decrease of 22%, or \$169,347, in total expenses included in adjusted income (loss) from operations.

	<b>Unaudited</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
	<b>(Actual)</b>	<b>(Pro Forma)</b>	<b>(Pro Forma)</b>
Beginning subscribers	19,003,856	17,348,622	13,653,107
Gross subscriber additions	6,208,482	7,710,306	8,077,674
Deactivated subscribers	<u>(6,439,580)</u>	<u>(6,055,072)</u>	<u>(4,382,159)</u>
Net additions	<u>(231,098)</u>	<u>1,655,234</u>	<u>3,695,515</u>
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>17,348,622</u>
Retail	7,725,750	8,905,087	9,238,715
OEM	10,930,952	9,995,953	8,033,268
Rental	<u>116,056</u>	<u>102,816</u>	<u>76,639</u>
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>17,348,622</u>
Retail	(1,179,452)	(333,628)	784,135
OEM	935,114	1,962,685	2,863,895
Rental	<u>13,240</u>	<u>26,177</u>	<u>47,485</u>
Net additions	<u>(231,098)</u>	<u>1,655,234</u>	<u>3,695,515</u>
Self-pay	15,703,932	15,549,657	13,873,346
Paid promotional	<u>3,068,826</u>	<u>3,454,199</u>	<u>3,475,276</u>
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>17,348,622</u>
Self-pay	154,275	1,676,311	2,382,480
Paid promotional	<u>(385,373)</u>	<u>(21,077)</u>	<u>1,313,035</u>
Net additions	<u>(231,098)</u>	<u>1,655,234</u>	<u>3,695,515</u>
Daily weighted average number of subscribers	<u>18,529,696</u>	<u>18,373,274</u>	<u>15,342,041</u>

	<b>Unaudited Pro Forma</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Average self-pay monthly churn (1)(7)	2.0%	1.8%	1.7%
Conversion rate (2)(7)	45.4%	47.5%	50.9%
ARPU (7)(10)	\$ 10.73	\$ 10.56	\$ 10.66
SAC, as adjusted, per gross subscriber addition (7)(11)	\$ 63	\$ 74	\$ 86
Customer service and billing expenses, as adjusted, per average subscriber (7)(12)	\$ 1.05	\$ 1.11	\$ 1.18
Total revenue	\$ 2,526,703	\$ 2,436,740	\$ 2,058,608
Free cash flow (7)(13)	\$ 185,319	\$ (551,771)	\$ (504,869)
Adjusted income (loss) from operations (14)	\$ 462,539	\$ (136,298)	\$ (565,452)
Net loss	\$ (441,333)	\$ (902,335)	\$ (1,247,633)

Note: See pages 50 through 63 for footnotes.

*Subscribers.* At December 31, 2009, we had 18,772,758 subscribers, a decrease of 231,098 subscribers, or 1%, from the 19,003,856 subscribers as of December 31, 2008. The decrease was principally the result of 385,373 fewer paid promotional trials compared to December 31, 2008 due to the decline in North American auto sales. This decline was partially offset by an increase of 154,275 in self-pay subscribers compared to December 31, 2008. Deactivation rates for self-pay subscriptions in the year increased to 2.0% per month reflecting reductions in consumer discretionary spending, subscriber response to our increase in prices for multi-subscription accounts, channel line-up changes in 2008, the institution of a monthly charge for our upgraded streaming service and the introduction of the U.S. Music Royalty Fee.



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We ended 2008 with 19,003,856 subscribers, an increase of 1,655,234, or 10%, from the 17,348,622 subscribers as of December 31, 2007. Net subscriber additions decreased 2,040,281, or 55% during 2008 from 2007. Deactivation rates for self-pay subscriptions in the year increased slightly to 1.8%; deactivations due to non-conversions of subscribers in paid promotional trial periods increased as production penetration rates increased.

*ARPU.* For the years ended December 31, 2009 and 2008, total ARPU was \$10.73 and \$10.56, respectively. Increases in subscriber revenue were driven mainly by the sale of “Best of” programming, increased rates on our multi-subscription packages and revenues earned on our internet packages, partially offset by lower advertising revenue.

For the years ended December 31, 2008 and 2007, total ARPU was \$10.56 and \$10.66, respectively. The decrease was driven by a change in the mix of discounted OEM promotional subscriptions, subscriber win-back programs, second subscribers and a decline in net advertising revenue per average subscriber.

*SAC, As Adjusted, Per Gross Subscriber Addition.* For the years ended December 31, 2009 and 2008, SAC, as adjusted, per gross subscriber addition was \$63 and \$74, respectively. The decrease was primarily driven by lower OEM subsidies, fewer OEM installations relative to gross subscriber additions and lower aftermarket inventory charges in the year ended December 31, 2009 compared to 2008.

For the years ended December 31, 2008 and 2007, SAC, as adjusted, per gross subscriber addition was \$74 and \$86, 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.* For the years ended December 31, 2009 and 2008, customer service and billing expenses, as adjusted, per average subscriber was \$1.05 and \$1.11, respectively. The decline was primarily due to decreases in personnel costs and customer call center expenses.

For the years ended December 31, 2008 and 2007, Customer service and billing expenses, as adjusted, per average subscriber was \$1.11 and \$1.18, respectively. The decline was primarily due to efficiencies across a larger subscriber base.

*Adjusted Income (Loss) from Operations.* For the years ended December 31, 2009 and 2008, our adjusted income (loss) from operations was \$462,539 and (\$136,298), respectively. Adjusted income (loss) from operations was favorably impacted by an increase of 4%, or \$89,963, in revenues and a decrease of 20%, or \$508,874, in total expenses included in adjusted income (loss) from operations. The increase in revenue was due mainly to an increase in weighted average subscribers as well as increased rates on multi-subscription packages, revenues earned on internet packages, the introduction of the U.S. Music Royalty Fee and the sale of “Best of” programming, partially offset by decreased by equipment revenue. The decreases in expenses were primarily driven by lower subscriber acquisition costs, lower sales and marketing discretionary spend, savings in programming and content expenses, and lower legal and consulting costs in general and administrative expenses.

For the years ended December 31, 2008 and 2007, our adjusted income (loss) from operations was (\$136,298) and (\$565,452), respectively. Adjusted income (loss) from operations was favorably impacted by an increase of 18%, or \$378,132, in revenues and a decrease of 2%, or \$51,022, in total expenses included in adjusted income (loss) from operations.

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*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, 2007. The pro forma information below does not give effect to any adjustments as a result of the purchase price accounting for the Merger, or the goodwill impairment charge taken during 2008. See footnote 8 (pages 51 to 52) and footnote 14 (page 57) for a reconciliation of net income (loss) to adjusted income (loss) from operations.

<i>(in thousands)</i>	<b>Unaudited Pro Forma</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b>Revenue:</b>			
Subscriber revenue, including effects of rebates	\$ 593,841	\$ 588,622	\$ 501,595
Advertising revenue, net of agency fees	14,467	15,776	20,571
Equipment revenue	19,008	30,712	25,133
Other revenue	56,463	8,998	10,216
Total revenue	683,779	644,108	557,515
<b>Operating expenses:</b>			
Satellite and transmission	25,094	22,851	23,697
Programming and content	92,857	105,215	109,076
Revenue share and royalties	124,527	122,711	163,541
Customer service and billing	58,887	67,036	65,006
Cost of equipment	12,200	18,084	37,334
Sales and marketing	80,161	81,712	123,711
Subscriber acquisition costs	127,588	132,731	180,767
General and administrative	39,108	51,591	64,223
Engineering, design and development	8,018	10,380	14,303
Depreciation and amortization	57,549	49,519	75,045
Restructuring, impairments and related costs	2,640	2,977	—
Share-based payment expense	7,480	24,945	52,897
Total operating expenses	636,109	689,752	909,600
Income (loss) from operations	47,670	(45,644)	(352,085)
Other expense	(70,276)	(202,649)	(52,055)
Loss before income taxes	(22,606)	(248,293)	(404,140)
Income tax expense	(2,637)	(175)	(901)
<b>Net loss</b>	<b>\$ (25,243)</b>	<b>\$ (248,468)</b>	<b>\$ (405,041)</b>

*Highlights for the Three Months Ended December 31, 2009.* Our revenue grew 6%, or \$39,671, in the three months ended December 31, 2009 compared to 2008. Subscriber revenue increased 1%, or \$5,219, in the three months ended December 31, 2009 compared to 2008. The increase in subscriber revenue was driven by the sale of “Best of” programming and the price increases to our multi-subscription and internet packages. Advertising revenue decreased 8%, or \$1,309, in the three months ended December 31, 2009 compared to 2008. The decrease in advertising revenue was driven by the current economic environment. Equipment revenue decreased 38%, or \$11,704, in the three months ended December 31, 2009 compared to 2008. The decrease in equipment revenue was driven by declines in sales through our direct to consumer distribution channel and lower product royalties. Other revenue increased 528%, or \$47,465, in the three months ended December 31, 2009 compared to 2008. The increase in other revenue was driven by the U.S. Music Royalty Fee introduced in the third quarter of 2009. The overall increase in revenue, combined with a decrease of 7%, or \$43,871, in adjusted operating costs (total operating expense excluding restructuring, impairments and related costs, depreciation and amortization and share-based payment expense), resulted in improved adjusted income (loss) from operations of \$115,339 in the three months ended December 31, 2009 compared to \$31,797 in 2008.

Satellite and transmission costs increased 10%, or \$2,243, in the three months ended December 31, 2009 compared to 2008 due to non-cash repeater lease charges and an increase in in-orbit insurance expense, partially offset by reductions in repeater maintenance costs and personnel costs. Programming and content costs decreased 12%, or \$12,358, in the three months ended December 31, 2009 compared to 2008, due mainly to reductions in personnel and on-air talent costs as well as savings on certain content agreements. Revenue share and royalties increased 1%, or \$1,816, in the three months ended December 31, 2009 compared to 2008 primarily due to an increase in our revenues and an increase in the statutory royalty rate for the performance of sound recordings. Customer service and billing costs decreased 12%, or \$8,149, in the three months ended December 31, 2009 compared to 2008 primarily due to decreases in personnel costs and customer call center expenses. Cost of equipment decreased 33%, or \$5,884, in the three months ended December 31, 2009 compared to 2008 as a result of a decrease in our direct to customer sales and lower inventory write-downs.

Sales and marketing costs decreased 2%, or \$1,551, in the three months ended December 31, 2009 compared to 2008 due to reduced personnel costs and third party distribution support expenses. Subscriber acquisition costs decreased 4%, or \$5,143, in the three months ended December 31, 2009 compared to 2008. This improvement was driven by lower OEM subsidies, improved chip set costs and lower aftermarket acquisition costs, partially offset by higher aftermarket inventory related charges.

General and administrative costs decreased 24%, or \$12,483, in the three months ended December 31, 2009 compared to 2008 mainly due to the absence of certain legal and regulatory charges incurred in 2008 and lower personnel costs. Engineering, design and development costs decreased 23%, or \$2,362, in the three months ended December 31, 2009 compared to 2008, due to lower costs associated with development, tooling and testing of radios as well as lower personnel costs.

Restructuring, impairments and related costs decreased 11%, or \$337, in the three months ended December 31, 2009 compared to 2008 mainly due to fewer restructuring charges associated with the Merger.

Other expenses decreased 65%, or \$132,373, in the three months ended December 31, 2009 compared to 2008 driven mainly by a decrease in loss on extinguishment of debt and credit facilities of \$94,324 and a decrease of \$28,892 in loss on investments.

*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 2007. The increase in subscriber revenue was driven primarily by a 14% growth in average subscribers. Advertising revenue decreased 23%, or \$4,795, in the three months ended December 31, 2008 compared to 2007. The decrease in advertising revenue was driven by reduced spending by advertisers. Equipment revenue increased 22%, or \$5,579, in the three months ended December 31, 2008 compared to 2007. The increase in equipment revenue was driven by increased sales through our direct to consumer distribution channel at higher average prices. Other revenue decreased 12%, or \$1,218, in the three months ended December 31, 2008 compared to 2007. The decrease in other revenue was driven mainly by decreased content license fees. The overall increase in revenue was accompanied by lower operating costs, as described below, resulting in a significantly improved adjusted income (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.

Satellite and transmission costs decreased 4%, or \$846, in the three months ended December 31, 2008 compared to 2007 primarily due to reductions in repeater maintenance costs and personnel costs. Programming and content costs decreased 4%, or \$3,861, in the three months ended December 31, 2008 compared to 2007 as a result of Merger related savings. Revenue share and royalties, representing approximately 19% and 29% of revenue during 2008 and 2007 respectively, 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 decreased 52%, or \$19,250, in the three months ended December 31, 2008 compared to 2007 as a result of lower product costs.

Sales and marketing cost decreased 34%, or \$41,999, in the three months ended December 31, 2008 compared to 2007 due to reduced advertising and cooperative marketing spend and Merger related savings, partially offset by higher customer retention spending. Subscriber acquisition costs decreased 27%, or \$48,036, in the three months ended December 31, 2008 compared to 2007. This improvement was primarily driven by 27% lower gross additions in the fourth quarter of 2008.

General and administrative costs decreased 20%, or \$12,632, in the three months ended December 31, 2008 compared to 2007, reflecting lower Merger costs and savings from the integration of administrative functions. Engineering, design and development costs decreased 27%, or \$3,923, in the three months ended December 31, 2008 compared to 2007 due to lower product development costs and Merger savings.

Restructuring, impairments and related costs increased \$2,977 in the three months ended December 31, 2008 compared to 2007 due to restructuring charges associated with the Merger.

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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.

<i>(in thousands)</i>	<b>Unaudited Pro Forma</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b>Revenue:</b>			
Subscriber revenue, including effects of rebates	\$ 2,334,317	\$ 2,258,322	\$ 1,888,709
Advertising revenue, net of agency fees	51,754	69,933	73,340
Equipment revenue	50,352	69,398	57,614
Other revenue	90,280	39,087	38,945
<b>Total revenue</b>	<b>2,526,703</b>	<b>2,436,740</b>	<b>2,058,608</b>
<b>Operating expenses:</b>			
Satellite and transmission	82,170	99,185	101,721
Programming and content	370,470	446,638	401,461
Revenue share and royalties	486,990	477,962	403,059
Customer service and billing	232,405	244,195	217,402
Cost of equipment	40,188	66,104	97,820
Sales and marketing	232,199	342,296	413,084
Subscriber acquisition costs	401,670	577,126	654,775
General and administrative	181,920	267,032	271,831
Engineering, design and development	36,152	52,500	62,907
Depreciation and amortization	203,145	245,571	293,976
Restructuring, impairments and related costs	32,807	10,434	—
Share-based payment expense	78,782	124,619	165,099
<b>Total operating expenses</b>	<b>2,378,898</b>	<b>2,953,662</b>	<b>3,083,135</b>
<b>Income (loss) from operations</b>	<b>147,805</b>	<b>(516,922)</b>	<b>(1,024,527)</b>
Other expense	(583,157)	(381,425)	(221,610)
<b>Loss before income taxes</b>	<b>(435,352)</b>	<b>(898,347)</b>	<b>(1,246,137)</b>
Income tax expense	(5,981)	(3,988)	(1,496)
<b>Net loss</b>	<b>\$ (441,333)</b>	<b>\$ (902,335)</b>	<b>\$ (1,247,633)</b>

*Highlights for the Year Ended December 31, 2009.* Our revenue grew 4%, or \$89,963, in the year ended December 31, 2009 compared to 2008. Subscriber revenue grew 3%, or \$75,995, in the year ended December 31, 2009 compared to 2008. Advertising revenue decreased 26%, or \$18,179, in the year ended December 31, 2009 compared to 2008. The decrease in advertising revenue was driven by the current economic environment. Equipment revenue decreased 27%, or \$19,046, in the year ended December 31, 2009 compared to 2008. The decrease in equipment revenue was driven by declines in sales through our direct to consumer distribution channel and lower product and component sales offset by higher product royalties. Other revenue increased 131%, or \$51,193, in the year ended December 31, 2009 compared to 2008. The increase in other revenue was driven by the U.S. Music Royalty Fee introduced in the third quarter of 2009. The overall increase in revenue, combined with a decrease of 20%, or \$508,874, in adjusted operating costs (total operating expense excluding restructuring, impairments and related costs, depreciation and amortization and share-based payment expense), resulted in improved adjusted income (loss) from operations of \$462,539 in the year ended December 31, 2009 compared to (\$136,298) in 2008.

Satellite and transmission costs decreased 17%, or \$17,015, in the year ended December 31, 2009 compared to 2008 due to reductions in repeater maintenance costs, non-cash repeater lease charges and personnel costs. Programming and content costs decreased 17%, or \$76,168, in the year ended December 31, 2009 compared to 2008, due mainly to a \$27,500 one-time payment recognized in 2008 to a programming provider upon completion of the Merger, reductions in personnel and on-air talent costs as well as savings on certain content agreements. Revenue share and royalties increased 2%, or \$9,028, in the year ended December 31, 2009 compared to 2008. Customer service and billing costs decreased 5%, or \$11,790, in the year ended December 31, 2009 compared to 2008 due to scale efficiencies. Cost of equipment decreased 39%, or \$25,916, in the year ended December 31, 2009 compared to 2008 as a result of a decrease in direct to customer sales, lower inventory write-downs and lower product and component sales.

Sales and marketing costs decreased 32%, or \$110,097, in the year ended December 31, 2009 compared to 2008 due to reduced advertising and cooperative marketing spend as well as reductions to personnel costs and third party distribution support expenses. Subscriber acquisition costs decreased 30%, or \$175,456, in the year ended December 31, 2009 compared to 2008. This improvement was driven by fewer OEM installations relative to gross subscriber additions, improved OEM subsidies and chip set cost, decreased production of certain radios and lower aftermarket inventory reserves as compared to 2008. Subscriber acquisition costs also decreased as a result of the 19% decline in gross additions during the year ended December 31, 2009 compared to 2008.

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General and administrative costs decreased 32%, or \$85,112, mainly due to the absence of certain legal and regulatory charges incurred in 2008 and lower personnel costs. Engineering, design and development costs decreased 31%, or \$16,348, in the year ended December 31, 2009 compared to 2008, due to lower costs associated with development, tooling and testing of radios as well as lower personnel costs.

Restructuring, impairments and related costs increased 214%, or \$22,373, mainly due to a loss of \$24,196 on capitalized installment payments for the launch of a satellite, which are expected to provide no future benefit due to the counterparty's bankruptcy filing, offset partially by a decrease in personnel related restructuring costs.

Other expenses increased 53%, or \$201,732, in the year ended December 31, 2009 compared to 2008 driven mainly by the increase in loss on extinguishment of debt and credit facilities of \$169,443 and an increase in interest expense of \$88,787, partially offset by a decrease of \$45,448 in loss on investments. The loss on the extinguishment of debt and credit facilities was incurred on the full repayment of SIRIUS' Credit Agreement with Liberty Media and XM's Amended and Restated Credit Agreement and termination of XM's Second-Lien Credit Agreement. Interest expense increased due primarily to the issuance of XM's 13% Senior Notes due 2013 and the 7% Exchangeable Senior Subordinated Notes due 2014 in the third quarter of 2008.

*Highlights for the Year Ended December 31, 2008.* Our revenue grew 18%, or by \$378,132, in the year ended December 31, 2008. Subscriber revenue grew 20%, or \$369,613, in the year ended December 31, 2008 compared to 2007. Advertising revenue decreased 5%, or \$3,407, in the year ended December 31, 2008 compared to 2007. The decrease in advertising revenue was driven by the economic environment. Equipment revenue increased 20%, or \$11,784, in the year ended December 31, 2008 compared to 2007. The increase in equipment revenue was driven by higher product royalties and increased sales through our direct to consumer distribution channel at higher average prices. Other revenue increased \$142 in the year ended December 31, 2008 compared to 2007. This revenue growth was driven by our 20% 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.

Satellite and transmission costs decreased 2%, or \$2,536, in the year ended December 31, 2008 compared to 2007 due to reductions in repeater maintenance costs and personnel costs. Programming and content costs increased 11%, or \$45,177, in the year ended December 31, 2008 compared to 2007, primarily due to 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, in the year ended December 31, 2008 compared to 2007, maintaining a flat percentage of revenue of approximately 20% in 2008 and 2007. Customer service and billing costs increased 12%, or \$26,793, in the year ended December 31, 2008 compared to 2007 due to a larger subscriber base, mitigated by scale efficiencies. Cost of equipment decreased by 32%, or \$31,716, in the year ended December 31, 2008 compared to 2007 as a result of lower product costs.

Sales and marketing costs decreased 17%, or \$70,788, in the year ended December 31, 2008 compared to 2007 due to reduced advertising and cooperative marketing spend, offset in part by higher customer retention spending. Subscriber acquisition costs declined nearly 12%, or \$77,649, in the year ended December 31, 2008 compared to 2007. This improvement was primarily driven by a 14% improvement in SAC, as adjusted, per gross 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, in the year ended December 31, 2008 compared to 2007, reflecting lower one-time costs in connection with the Merger and early integration savings in 2008. Engineering, design and development costs decreased 17%, or \$10,407, in the year ended December 31, 2008 compared to 2007 due to fewer OEM platform launches and lower product development costs.

Restructuring, impairments and related costs increased \$10,434, in the year ended December 31, 2008 compared to 2007 due to restructuring charges associated with the Merger.

Other expenses increased by \$159,815 or 72%, in the year ended December 31, 2008 compared to 2007 as a result of higher interest expense and loss from redemption of debt during 2008.

### **Unaudited Actual Information**

Our discussion of our unaudited actual results of operations includes the following non-GAAP financial measures: average self-pay monthly 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 (pages 50 through 63) following our discussion of results of operations for the definitions and a further discussion of the usefulness of such non-GAAP financial measures.

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The discussion of our results of operations for the three months and three years ended December 31, 2009, 2008, and 2007 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 Subscribers and Metrics.* The following tables contain our actual subscribers and key operating metrics for the three months and three years ended December 31, 2009, 2008 and 2007:

	<b>Unaudited Actual</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Beginning subscribers	18,515,730	18,920,911	7,667,476
Gross subscriber additions	1,882,950	1,713,210	1,194,014
Deactivated subscribers	(1,625,922)	(1,630,265)	(539,705)
Net additions	<u>257,028</u>	<u>82,945</u>	<u>654,309</u>
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>8,321,785</u>
Retail	7,725,750	8,905,087	4,640,710
OEM	10,930,952	9,995,953	3,665,631
Rental	<u>116,056</u>	<u>102,816</u>	<u>15,444</u>
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>8,321,785</u>
Retail	(200,154)	(131,333)	211,962
OEM	442,422	218,249	444,244
Rental	<u>14,760</u>	<u>(3,971)</u>	<u>(1,897)</u>
Net additions	<u>257,028</u>	<u>82,945</u>	<u>654,309</u>
Self-pay	15,703,932	15,549,657	5,685,064
Paid promotional	<u>3,068,826</u>	<u>3,454,199</u>	<u>2,636,721</u>
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>8,321,785</u>
Self-pay	247,182	359,069	423,794
Paid promotional	<u>9,846</u>	<u>(276,124)</u>	<u>230,515</u>
Net additions	<u>257,028</u>	<u>82,945</u>	<u>654,309</u>
Daily weighted average number of subscribers	<u>18,576,151</u>	<u>18,910,689</u>	<u>7,878,574</u>

	<b>Unaudited Actual</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Average self-pay monthly churn (1)(7)	2.0%	1.8%	1.7%
Conversion rate (2)(7)	46.4%	44.2%	47.4%
ARPU (7)(16)	\$ 10.81	\$ 10.30	\$ 10.05
SAC, as adjusted, per gross subscriber addition (7)(17)	\$ 55	\$ 59	\$ 87
Customer service and billing expenses, as adjusted, per average subscriber (7)(18)	\$ 1.06	\$ 1.18	\$ 1.23
Total revenue	\$ 676,173	\$ 622,183	\$ 249,816
Free cash flow (7)(19)	\$ 149,547	\$ 25,877	\$ 75,921
Adjusted income (loss) from operations (20)	\$ 170,566	\$ 72,155	\$ (107,220)
Net loss	\$ 14,167	\$ (245,844)	\$ (166,223)

Note: See pages 50 through 63 for footnotes.

*Subscribers.* At December 31, 2009, we had 18,772,758 subscribers, a decrease of 231,098 subscribers, or 1%, from the 19,003,856 subscribers as of December 31, 2008. Net subscriber additions increased 174,083, or 210%, in the three months ended December 31, 2009 compared to 2008. Net subscriber additions in our OEM channel increased 224,173, or 103%, in the three months ended December 31, 2009 compared to 2008. Net subscriber additions in our retail channel decreased 68,821, or 52%, in the three months ended December 31, 2009 compared to 2008. Deactivation rates for self-pay subscriptions in the quarter increased to 2.0% per month reflecting reductions in consumer discretionary spending, subscriber response to our increase in prices for multi-subscription accounts, channel line-up changes in 2008, the institution of a monthly charge for our streaming service and the introduction of the U.S. Music Royalty Fee.

We ended the fourth quarter of 2008 with 19,003,856 subscribers, an increase of 10,682,071 subscribers, or 128%. The increase was primarily a result of the additional subscribers acquired in the Merger. Net subscriber additions decreased 571,364, or 87%, in the three months ended December 31, 2008 compared to 2007. Net subscriber additions in our OEM channel decreased 225,995, or 51%, in the three months ended December 31, 2008 compared to 2007. Net subscriber additions in our retail channel decreased 343,295, or 162%, in the three months ended December 31, 2008 compared to 2007. Deactivations include the results of XM in the quarter. Deactivations for self-pay subscriptions increased slightly to 1.8% per month; non-conversions of subscribers in paid promotional trial periods increased as production penetration rates increased.

*ARPU.* For the three months ended December 31, 2009 and 2008, total ARPU was \$10.81 and \$10.30, respectively. The increase was driven by the revenues earned for “Best of” programming, increased rates on multi-subscription packages and internet subscriptions.

For the three months ended December 31, 2008 and 2007, total ARPU was \$10.30 and \$10.05, respectively. The increase was driven by the start of our “Best of” package sales and by a lower mix of prepaid subscriptions from automakers in vehicles which have not sold through to customers. These factors were partially offset by an increase in the mix of discounted OEM promotional trials, subscriber win-back 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 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.* For the three months ended December 31, 2009 and 2008, SAC, as adjusted, per gross subscriber addition was \$55 and \$59, respectively. The decrease in SAC was primarily due to lower OEM subsidies, lower chip set costs and lower aftermarket acquisition costs, partially offset by higher aftermarket inventory related charges compared to the three months ended December 31, 2008.

For the three months ended December 31, 2008 and 2007, SAC, as adjusted, per gross subscriber addition was \$59 and \$87, 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 be impacted by our increasing mix of OEM additions and the effects of purchase price accounting adjustments.

*Customer Service and Billing Expenses, As Adjusted, Per Average Subscriber.* For the three months ended December 31, 2009 and 2008, customer service and billing expenses, as adjusted, per average subscriber was \$1.06 and \$1.18, respectively.

For the three months ended December 31, 2008 and 2007, Customer service and billing expenses, as adjusted, per average subscriber decreased \$1.18 and \$1.23, respectively. 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.* For the three months ended December 31, 2009 and 2008, our adjusted income (loss) from operations was \$170,566 and \$72,155, respectively. Adjusted income (loss) from operations was favorably impacted by an increase of 9%, or \$53,990, in revenues and a decrease of 8%, or \$44,421, in total expenses included in adjusted income (loss) from operations. The increase in revenue was due mainly to increased rates on multi-subscription packages, revenues earned on internet packages, the introduction of the U.S. Music Royalty Fee and the sale of “Best of” programming. The decreases in expenses were primarily driven by lower subscriber acquisition costs, savings in programming and content expenses, lower customer service and billing expenses and lower legal and consulting costs in general and administrative expenses.

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For the three months ended December 31, 2008 and 2007, our adjusted income (loss) from operations was \$72,155 and (\$107,220), respectively. 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.

	<b>Unaudited Actual</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Beginning subscribers	19,003,856	8,321,785	6,024,555
Gross subscriber additions	6,208,482	14,954,112	4,183,901
Deactivated subscribers	(6,439,580)	(4,272,041)	(1,886,671)
Net additions	(231,098)	10,682,071	2,297,230
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>8,321,785</u>
Retail	7,725,750	8,905,087	4,640,710
OEM	10,930,952	9,995,953	3,665,631
Rental	116,056	102,816	15,444
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>8,321,785</u>
Retail	(1,179,452)	4,264,378	598,884
OEM	935,114	6,330,321	1,706,622
Rental	13,240	87,372	(8,276)
Net additions	<u>(231,098)</u>	<u>10,682,071</u>	<u>2,297,230</u>
Self-pay	15,703,932	15,549,657	5,685,064
Paid promotional	3,068,826	3,454,199	2,636,721
Ending subscribers	<u>18,772,758</u>	<u>19,003,856</u>	<u>8,321,785</u>
Self-pay	154,275	9,864,593	1,262,222
Paid promotional	(385,373)	817,478	1,035,008
Net additions	<u>(231,098)</u>	<u>10,682,071</u>	<u>2,297,230</u>
Daily weighted average number of subscribers	<u>18,529,696</u>	<u>13,378,035</u>	<u>7,082,927</u>

	<b>Unaudited Actual</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Average self-pay monthly churn (1)(7)	2.0%	1.8%	1.6%
Conversion rate (2)(7)	45.4%	47.5%	47.5%
ARPU (7)(21)	\$ 10.52	\$ 9.94	\$ 10.46
SAC, as adjusted, per gross subscriber addition (7)(22)	\$ 53	\$ 69	\$ 98
Customer service and billing expenses, as adjusted, per average subscriber (7)(23)	\$ 1.05	\$ 1.02	\$ 1.10
Total revenue	\$ 2,472,638	\$ 1,663,992	\$ 922,066
Free cash flow (7)(24)	\$ 185,319	\$ (244,467)	\$ (218,624)
Adjusted income (loss) from operations (25)	\$ 644,564	\$ 31,032	\$ (327,410)
Net loss	\$ (342,790)	\$ (5,313,288)	\$ (565,252)

Note: See pages 50 through 63 for footnotes.

*Subscribers.* At December 31, 2009, we had 18,772,758 subscribers, a decrease of 231,098 subscribers, or 1%, from the 19,003,856 subscribers as of December 31, 2008. The decrease was principally the result of 385,373 fewer paid promotional trials due to the decline in North American auto sales. This decline was partially offset by an increase of 154,275 in self-pay subscribers compared to December 31, 2008. Deactivation rates for self-pay subscriptions in the quarter increased to 2.0% per month reflecting reductions in consumer discretionary spending, subscriber response to our increase in prices for multi-subscription accounts, channel line-up changes in 2008, the institution of a monthly charge for our streaming service and the introduction of the U.S. Music Royalty Fee.



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. 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 to 1.8% while the conversion rate for subscribers in paid promotional trial periods stayed constant.

*ARPU.* For the years ended December 31, 2009 and 2008, total ARPU was \$10.52 and \$9.94, respectively. The increase was driven by the revenues earned for “Best of” programming, increased rates on multi-subscription packages and internet subscriptions.

For the years ended December 31, 2008 and 2007, total ARPU was \$9.94 and \$10.46, respectively. The decrease was driven by an increase in the mix of discounted OEM promotional trials, subscriber win-back 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 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.* For the years ended December 31, 2009 and 2008, SAC, as adjusted, per gross subscriber addition was \$53 and \$69, respectively. The decrease was primarily driven by the effect of purchase price accounting adjustments, lower OEM subsidies, decreased production of certain radios, lower aftermarket inventory reserves and improved equipment margins in the year ended December 31, 2009 compared to 2008.

For the years ended December 31, 2008 and 2007, SAC, as adjusted, per gross subscriber addition was \$69 and \$98, 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 be impacted by our increasing mix of OEM additions and the effects of purchase price accounting adjustments.

*Customer Service and Billing Expenses, As Adjusted, Per Average Subscriber.* For the years ended December 31, 2009 and 2008, customer service and billing expenses, as adjusted, per average subscriber was \$1.05 and \$1.02, respectively. The increase was primarily due to the inclusion of XM, which had historically experienced higher customer service and billing expenses.

For the years ended December 31, 2008 and 2007, Customer service and billing expenses, as adjusted, per average subscriber was \$1.02 and \$1.10, respectively. 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.* For the years ended December 31, 2009 and 2008, our adjusted income (loss) from operations was \$644,564 and \$31,032, respectively. Adjusted income (loss) from operations was favorably impacted by an increase of 49%, or \$808,646, in revenues, partially offset by the increase of 12%, or \$195,114, in total expenses included in adjusted income (loss) from operations. The increase in revenue was due mainly to the inclusion of XM for a full year, an increase in weighted average subscribers, increased rates on multi-subscription packages, revenues earned on internet packages, the introduction of the U.S. Music Royalty Fee and the sale of “Best of” programming. The increases in expenses were primarily driven by the inclusion of XM for a full year.

For the years ended December 31, 2008 and 2007, our adjusted income (loss) from operations was \$31,032 and (\$327,410), respectively. 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.

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*Unaudited Actual Results of Operations.* Set forth below are our actual results of operations for the three months ended December 31, 2009, 2008 and 2007. See footnote 20 (pages 61 to 62) for a reconciliation of net income (loss) to adjusted income (loss) from operations for the three months ended December 31, 2009, 2008 and 2007. See footnote 25 (page 63) for a reconciliation of net income (loss) to adjusted income (loss) from operations for the three years ended December 31, 2009, 2008 and 2007.

<i>(in thousands)</i>	<b>Unaudited</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b>Revenue:</b>			
Subscriber revenue, including effects of rebates	\$ 588,048	\$ 568,523	\$ 227,658
Advertising revenue, net of agency fees	14,467	15,776	9,770
Equipment revenue	19,008	30,712	12,065
Other revenue	54,650	7,172	323
<b>Total revenue</b>	<b>676,173</b>	<b>622,183</b>	<b>249,816</b>
<b>Operating expenses (1):</b>			
Satellite and transmission	24,597	24,481	5,175
Programming and content	77,297	89,214	62,735
Revenue share and royalties	100,355	103,217	56,762
Customer service and billing	58,887	67,818	29,288
Cost of equipment	12,200	18,084	15,886
Sales and marketing	76,308	80,699	56,866
Subscriber acquisition costs	109,733	113,512	100,062
General and administrative	44,601	64,586	37,212
Engineering, design and development	8,056	12,404	7,946
Impairment of goodwill	—	15,331	—
Depreciation and amortization	77,826	82,958	27,638
Restructuring, impairments and related costs	2,640	2,977	—
<b>Total operating expenses</b>	<b>592,500</b>	<b>675,281</b>	<b>399,570</b>
<b>Income (loss) from operations</b>	<b>83,673</b>	<b>(53,098)</b>	<b>(149,754)</b>
<b>Other income (expense):</b>			
Interest and investment income	1,043	(90)	4,171
Interest expense, net of amounts capitalized	(66,358)	(61,196)	(19,887)
Loss on extinguishment of debt and credit facilities, net	(3,879)	(98,203)	—
Gain (loss) on investments	1,474	(27,418)	—
Other income (expense)	851	(5,664)	17
<b>Total other income (expense)</b>	<b>(66,869)</b>	<b>(192,571)</b>	<b>(15,699)</b>
<b>Income (loss) before income taxes</b>	<b>16,804</b>	<b>(245,669)</b>	<b>(165,453)</b>
Income tax expense	(2,637)	(175)	(770)
<b>Net income (loss)</b>	<b>\$ 14,167</b>	<b>\$ (245,844)</b>	<b>\$ (166,223)</b>

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

Satellite and transmission	\$ (276)	\$ 1,349	\$ 364
Programming and content	1,646	4,672	2,786
Customer service and billing	—	783	165
Sales and marketing	(474)	2,165	539
Subscriber acquisition costs	—	—	156
General and administrative	5,493	12,995	10,261
Engineering, design and development	38	2,023	625
<b>Total share-based payment expense</b>	<b>\$ 6,427</b>	<b>\$ 23,987</b>	<b>\$ 14,896</b>

*Highlights for the Three Months Ended December 31, 2009.* Our revenue grew 9%, or \$53,990, in the three months ended December 31, 2009 compared to 2008. Subscriber revenue increased 3%, or \$19,525, in the three months ended December 31, 2009 compared to 2008. The increase in subscriber revenue was driven by the sale of “Best of” programming and the rate increases to our multi-subscription and internet packages. Advertising revenue decreased 8%, or \$1,309, in the three months ended December 31, 2009 compared to 2008. The decrease in advertising revenue was driven by the current economic environment. Equipment revenue decreased 38%, or \$11,704, in the three months ended December 31, 2009 compared to 2008. The decrease in equipment revenue was driven by declines in sales through our direct to consumer distribution channel and lower product royalties. Other revenue increased 662%, or \$47,478, in the three months ended December 31, 2009 compared to 2008. The increase in other revenue was driven by the U.S. Music Royalty Fee introduced in the third quarter of 2009. The overall increase in revenue, combined with a decrease of 8%, or \$44,421, in adjusted operating costs (total operating expense excluding restructuring, impairments and related costs, depreciation and amortization and share-based payment expense), resulted in improved adjusted income (loss) from operations of \$170,566 in the three months ended December 31, 2009 compared to \$72,155 in 2008.

Satellite and transmission costs increased slightly in the three months ended December 31, 2009 compared to 2008 due to non-cash repeater lease charges and an increase in in-orbit insurance expense, partially offset by reductions in repeater maintenance costs and personnel costs. Programming and content costs decreased 13%, or \$11,917, in the three months ended December 31, 2009 compared to 2008, due mainly to reductions in personnel and on-air talent costs as well as savings on certain content agreements. Revenue share and royalties decreased 3%, or \$2,862, in the three months ended December 31, 2009 compared to 2008 primarily due to the impact of purchase accounting adjustments partially offset by increases to revenues and an increase in the statutory royalty rate for the performance of sound recordings. Customer service and billing costs decreased 13%, or \$8,931, in the three months ended December 31, 2009 compared to 2008 primarily due to decreases in personnel costs and customer call center expenses. Cost of equipment decreased 33%, or \$5,884, in the three months ended December 31, 2009 compared to 2008 as a result of a decrease in our direct to customer sales and lower inventory write-downs.

Sales and marketing costs decreased \$4,391, or 5%, in the three months ended December 31, 2009 compared to 2008 due to reduced advertising and cooperative marketing spend as well as reductions to personnel costs and third party distribution support expenses. Subscriber acquisition costs decreased 3%, or \$3,779, in the three months ended December 31, 2009 compared to 2008. The decrease was primarily due to lower OEM subsidies, improved chip set costs and lower aftermarket acquisition costs, partially offset by higher aftermarket inventory related charges.

General and administrative costs decreased 31%, or \$19,985, in the three months ended December 31, 2009 compared to 2008 mainly due to the absence of certain legal and regulatory charges incurred in 2008 and lower personnel costs. Engineering, design and development costs decreased 35%, or \$4,348, in the three months ended December 31, 2009 compared to 2008, due to lower costs associated with development, tooling and testing of radios as well as lower personnel costs.

Restructuring, impairments and related costs decreased 11%, or \$337, in the three months ended December 31, 2009 compared to 2008 mainly due to fewer restructuring charges associated with the Merger.

Other expenses decreased 65%, or \$125,702, in the three months ended December 31, 2009 compared to 2008 driven mainly by a decrease in loss on extinguishment of debt and credit facilities of \$94,324 and a decrease of \$28,892 in loss on investments, partially offset by an increase in interest expense of \$5,162.

*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 2007. The inclusion of XM's results for the fourth quarter of 2008 drove \$315,551 of the increase. Adjusted income (loss) from operations was \$72,155 in the fourth quarter of 2008 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.

Satellite and transmission costs increased by 373%, or \$19,306, in the three months ended December 31, 2008 compared to 2007 due to the inclusion of XM's satellite and transmission costs for the fourth quarter of 2008. Programming and content costs increased by 42%, or \$26,479, in the three months ended December 31, 2008 compared to 2007, 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, in the three months ended December 31, 2008 compared to 2007, as a result of the inclusion of XM's revenue share and royalties costs. Customer service and billing costs increased 132%, or \$38,530, in the three months ended December 31, 2008 compared to 2007. \$36,002 of the increase was attributable to the Merger.

Sales and marketing cost increased 42%, or \$23,833, in the three months ended December 31, 2008 compared to 2007. The increase was attributable to the merger, partially offset by reduced advertising and cooperative marketing spend. Subscriber acquisition costs increased 13%, or \$13,450, over the prior year's quarter, of which, \$37,343 was attributable to the Merger, partially offset 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 which was attributable to the Merger. Engineering, design and development costs increased 56%, or \$4,458. The Merger drove \$6,467 of the increase. The offsetting decrease was due lower product development costs and savings at SIRIUS as result of the Merger.

Restructuring, impairments and related costs increased \$2,977 in the three months ended December 31, 2008 compared to 2007 due to restructuring charges associated with the Merger.

Other expenses increased 1,127%, or \$176,872, in the three months ended December 31, 2008 compared to 2007 driven mainly by an increase in loss on extinguishment of debt and credit facilities of \$98,203, an increase in interest expense of \$41,309, and an increase of \$27,418 in loss on investments due to the inclusion of XM's expenses attributable to the Merger.

**Year Ended December 31, 2009 Compared with Year Ended December 31, 2008 and Year Ended December 31, 2008 Compared with Year Ended December 31, 2007 — Actual**

**Total Revenue**

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

- **2009 vs. 2008:** For the years ended December 31, 2009 and 2008, subscriber revenue was \$2,287,503 and \$1,548,919, respectively, an increase of 48%, or \$738,584. The Merger was responsible for approximately \$670,870 of the increase and the remaining increase was primarily attributable to the sale of “Best of” programming, increased internet and multi-subscription rates and higher average subscribers.
- **2008 vs. 2007:** For the years ended December 31, 2008 and 2007, subscriber revenue was \$1,548,919 and \$854,933, respectively, an increase of 81%, or \$693,986. The Merger was responsible for approximately \$472,457 of the increase and the remaining increase was primarily attributable to the growth of subscribers to our services.

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

	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Subscription fees	\$ 2,266,809	\$ 1,529,726	\$ 853,832
Activation fees	21,837	23,025	20,878
Effect of rebates	(1,143)	(3,832)	(19,777)
Total subscriber revenue	<u>\$ 2,287,503</u>	<u>\$ 1,548,919</u>	<u>\$ 854,933</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.

*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.

- **2009 vs. 2008:** For the years ended December 31, 2009 and 2008, net advertising revenue was \$51,754 and \$47,190, respectively, which represents an increase of 10%, or \$4,564. The increase was due to the inclusion of XM revenue from the Merger, which was offset by a decrease in ad revenue due to the current economic environment.
- **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 38%, or \$12,998. The Merger was responsible for approximately \$10,010 of the increase and the remaining increase was primarily attributable to an increase in advertisers compared to 2007.

Our advertising revenue is subject to fluctuation based on the national economic environment. We believe general economic conditions have negatively affected our advertising revenue in recent quarters. We expect advertising revenue to grow as our subscribers increase, as the economy improves and as we increase the size and effectiveness of our advertising sales force.

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

- **2009 vs. 2008:** For the years ended December 31, 2009 and 2008, equipment revenue was \$50,352 and \$56,001, respectively, which represents a decrease of 10%, or \$5,649. The decrease was primarily due to a decrease in sales through our direct to consumer distribution channel and lower product royalties, partially offset by the inclusion of XM revenue for a full year.
- **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 91%, or \$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.

We expect equipment revenue to increase as we introduce new products and as sales grow through our direct to consumer distribution channel.

*Other Revenue.* Other revenue includes the U.S. Music Royalty Fee, revenue from affiliates, content licensing fees and syndication fees.

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, other revenue was \$83,029 and \$11,882, respectively, which represents an increase of 599%, or \$71,147. The increase was primarily due to the introduction of the U.S. Music Royalty Fee and the inclusion of XM revenue for a full year.
- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, other revenue was \$11,882 and \$3,660, respectively, which represents an increase of 225%, or \$8,222. The increase was primarily due to the Merger and was partially offset by decreased content licensing fees.

We expect other revenue to increase with a full year of billing of the U.S. Music Royalty Fee and as revenues from affiliates increase.

#### ***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.

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, satellite and transmission expenses were \$84,033 and \$59,279, respectively, which represents an increase of 42%, or \$24,754. The satellite and transmission increase was primarily due to the inclusion of XM's satellite and transmission expense, partially offset by decreases due to the elimination of contracts, decommissioned repeater sites and decrease in streaming costs.
- *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 112%, or \$31,372 primarily due to the Merger. XM satellite and transmission expense accounted for \$29,852 during the year ended December 31, 2008.

We expect satellite and transmission expenses, excluding share-based payment expense, to increase as we add to our in-orbit satellite fleet.

*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.

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, programming and content expenses were \$308,121 and \$312,189, respectively, which represents a decrease of \$4,068, or 1%. The increase from the inclusion of a full year of XM expense was offset by savings in content agreements, personnel and on-air talent costs.
- *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 32%, or \$76,130 primarily due to the Merger.

Our programming and content expenses, excluding share-based payment expense, are expected to decrease as we reduce duplicate programming and content costs.

*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.

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, revenue share and royalties were \$397,210 and \$280,852, respectively, which represents an increase of 41%, or \$116,358. The increase was primarily attributable to the inclusion of XM's revenue share and royalty expense as a result of the Merger, an increase in our revenues and an increase in the statutory royalty rate for the performance of sound recordings.
- *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 91%, or \$134,137. The increase was primarily attributable to an increase in our revenues, the \$91,132 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.

We expect these costs to increase as our revenues grow, as we expand our distribution of SIRIUS and XM radios through automakers, and as a result of statutory increases in the royalty rate for the performance of sound recordings.

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

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, customer service and billing expenses were \$234,456 and \$165,036, respectively, which represents an increase of 42%, or \$69,420. The increase was primarily due to the inclusion of XM's customer and billing expense as a result of the Merger and increased bad debt expense due to the current economic environment.
- *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 76%, or \$71,219, primarily due to the Merger. XM's customer services and billing expense accounted for \$59,767 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.

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.

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

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, cost of equipment was \$40,188 and \$46,091, respectively, which represents a decrease of 13%, or \$5,903. This was mainly due to lower sales volume through our direct to consumer channel, lower inventory related charges and lower product and component sales, partially offset by the inclusion of XM's cost of equipment expense as a result of the Merger.
- *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 29%, or \$10,274. The Merger related increase of approximately \$12,299 was partially offset by lower product costs.

We expect cost of equipment to vary in the future with changes in sales through our direct to consumer distribution channel.

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

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, sales and marketing expenses were \$228,956 and \$231,937, respectively, which represents a decrease of 1%, or \$2,981. The decrease was due to reductions in consumer advertising and cooperative marketing, personnel costs and third party distribution support expenses, partially offset by the inclusion of XM's sales and marketing expense.
- *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 27%, or \$48,724. The Merger increased sales and marketing expense by \$76,104, which was partially offset by a reduction in consumer advertising.

We expect sales and marketing expenses, excluding share-based payment expense, to increase as we increase our advertising, retention and promotional activities over a larger subscriber base.

*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; device royalties for certain radios; commissions paid to retailers and automakers as incentives to purchase, install and activate SIRIUS and XM radios; product warranty obligations; and provisions for inventory allowance. The majority of subscriber acquisition costs are incurred and expensed in advance of, 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.

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, subscriber acquisition costs were \$340,506 and \$371,343, respectively, which represents a decrease of 8%, or \$30,837. This decrease was primarily a result of lower OEM subsidies and chip set costs, decreases in production of certain radios and lower aftermarket inventory charges in the year ended December 31, 2009 compared to 2008, partially offset by the inclusion of XM's subscriber acquisition costs as a result of the Merger.
- *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 9%, or \$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 \$64,865 during the year ended December 31, 2008.

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. 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.

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, general and administrative expenses were \$227,554 and \$213,142, respectively, which represents an increase of 7%, or \$14,412, primarily due to the impact of the Merger, offset by lower costs for certain merger, litigation and regulatory matters.
- *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 37%, or \$57,279, primarily due to the impact of the Merger. XM's general and administrative expense accounted for \$47,322 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.

We expect total general and administrative expenses, excluding share-based payment expense, to decrease in future periods as we gain efficiencies in staff, facilities and information technology costs.

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

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, engineering, design and development expenses were \$41,031 and \$40,496, respectively, which represents an increase of 1%, or \$535. This increase was primarily due to the inclusion of XM's engineering, design and development expenses, partially offset by lower costs associated with development, tooling and testing of radios as well as lower personnel costs.
- *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 2%, or \$847. This decrease was primarily due to reduced OEM and product development costs, offset partially by the impact of the Merger.

We expect engineering, design and development expenses, excluding share-based payment expense, to increase in future periods as we increase development of our next generation chip sets.

#### ***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.

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, interest and investment income was \$3,645 and \$9,079, respectively. The decrease of 60%, or \$5,434, was primarily attributable to lower interest rates in 2009 and a lower average cash balance.
- *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 56%, or \$11,491 was primarily attributable to lower interest rates in 2008 and a lower cash balance.

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

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, interest expense was \$306,420 and \$144,833, respectively, which represents an increase of 112%, or \$161,587. Interest expense increased significantly as a result of the Merger, due to additional debt and higher interest rates. Increases in interest expense were partially offset by the capitalized interest associated with satellite construction and related 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 106%, or \$74,505. Interest expense increased significantly as a result of the Merger, due to 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.

We expect interest expense to increase as a result of changes in the GAAP recognition and reporting requirements for share lending arrangements which were adopted as of January 1, 2010. EITF No. 09-1, *Accounting for Own-Share Lending Arrangements in Contemplation of Convertible Debt Issuance*, (“EITF No. 09-1”), will require us to recognize an aggregate increase of \$378,000 in deferred financing costs associated with XM’s 7% Exchangeable Senior Subordinated Notes due 2014, which will be amortized to interest expense over the six year life of the notes under the effective interest method.

*Loss on Extinguishment of Debt and Credit Facilities, net.* Loss on extinguishment of debt and credit facilities, net, includes losses incurred as a result of the conversion and retirement of certain debt instruments.

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, loss on extinguishment of debt and credit facilities, net, was \$267,646 and \$98,203, respectively. During 2009, the loss was incurred on the retirement of the SIRIUS’ Term Loan and Purchase Money Loan borrowings from Liberty Media, the repurchase of a portion of XM Holdings’ 10% Convertible Senior Notes due 2009, and the retirement of XM’s Amended and Restated Credit Agreement and XM’s Second-Lien Credit Agreement.
- *2008 vs. 2007:* For the year ended December 31, 2008 and 2007, loss from redemption of debt was \$98,203 and \$0, respectively.

*Gain (loss) on investments.* Gain (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.

- *2009 vs. 2008:* For the years ended December 31, 2009 and 2008, gain (loss) on investment was \$1,931 and (\$30,507), respectively. The decrease in the loss was attributable to payments received from SIRIUS Canada in excess of our carrying value of our investments, decreases in our share of SIRIUS Canada’s and XM Canada’s net losses and decreases in impairment charges related to our investment in XM Canada for the year ended December 31, 2009 compared to 2008.
- *2008 vs. 2007:* For the years ended December 31, 2008 and 2007, loss on investment was \$30,507 and \$0, 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 are amortized over 15 years for tax purposes but not amortized for book purposes in accordance with GAAP.

- *2009 vs. 2008:* We recorded income tax expense of \$5,981 and \$2,476 for the years ended December 31, 2009 and 2008, respectively. The increase was attributed to the inclusion of XM.
- *2008 vs. 2007:* We recorded income tax expense of \$2,476 and \$2,435 for the years ended December 31, 2008 and 2007, respectively.

**Liquidity and Capital Resources**

***Cash Flows for the Year Ended December 31, 2009 Compared with Year Ended December 31, 2008 and Year Ended December 31, 2008 Compared with Year Ended December 31, 2007***

As of December 31, 2009 and 2008, we had \$383,489 and \$380,446, respectively, in cash and cash equivalents. The following table presents a summary of our cash flow activity for the periods set forth below (in thousands):

	<b>For the Years Ended December 31,</b>			<b>2009 vs. 2008</b>	<b>2008 vs. 2007</b>
	<b>2009</b>	<b>2008</b>	<b>2007</b>		
Net cash provided by (used in) operating activities	\$ 433,830	\$ (152,797)	\$ (148,766)	\$ 586,627	\$ (4,031)
Net cash (used in) provided by investing activities	(248,511)	728,425	(54,186)	(976,936)	782,611
Net cash (used in) provided by financing activities	(182,276)	(634,002)	248,351	451,726	(882,353)
Net increase (decrease) in cash and cash equivalents	3,043	(58,374)	45,399	61,417	(103,773)
Cash and cash equivalents at beginning of period	380,446	438,820	393,421	(58,374)	45,399
Cash and cash equivalents at end of period	<u>\$ 383,489</u>	<u>\$ 380,446</u>	<u>\$ 438,820</u>	<u>\$ 3,043</u>	<u>\$ (58,374)</u>

*Cash Flows Provided by (Used in) Operating Activities*

- *2009 vs. 2008:* Net cash provided by operating activities increased \$586,627 to \$433,830 for the year ended December 31, 2009 from net cash used in operating activities of \$152,797 for the year ended December 31, 2008. The increase was primarily the result of a decreased net loss, net of non-cash operating activities of \$388,435, and an increase in cash provided by working capital of \$198,192.



- *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 decrease in cash provided by working capital of \$194,376, offset partially by a decrease in net loss, net of non-cash operating activities of \$190,345. The decrease in working capital was primarily due to decreases in cash provided by deferred revenue and accounts payable and accrued expenses.

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

- *2009 vs. 2008:* Net cash used in investing activities increased \$976,936 to \$248,511 for the year ended December 31, 2009 from net cash provided by investing activities of \$728,425 for the year ended December 31, 2008. The increase was primarily due to a decrease of \$819,521 in net cash acquired from XM in the Merger, a decrease of \$65,869 from the sale of restricted and other investments and an increase in capital expenditures of \$117,960 associated with our satellite construction and launch vehicle, partially offset by a decrease of \$23,519 in Merger-related costs.
- *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.

We will incur significant capital expenditures to construct and launch our new satellites and 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 Flows (Used in) Provided by Financing Activities*

- *2009 vs. 2008:* Net cash used in financing activities decreased \$451,726 to \$182,276 for the year ended December 31, 2009 from \$634,002 for the year ended December 31, 2008. The decrease in cash used in financing activities was primarily due to an increase of \$413,462 in net proceeds from our agreement with Liberty Media and issuance of XM's 11.25% Senior Secured Notes due 2013 and SIRIUS' 9.75% Senior Secured Notes due 2015 during the year ended December 31, 2009 compared to proceeds from XM's 7% Exchangeable Senior Subordinated Notes due 2014 during the year ended December 31, 2008 and a decrease of \$61,880 in payments to a noncontrolling interest; partially offset by a decrease in debt payment of \$21,051, principally to holders of SIRIUS' 2 1/2% Convertible Notes due 2009, XM's Amended and Restated Credit Agreement due 2011 and SIRIUS' Term Loan and Purchase Money Loan borrowings from Liberty Media during the year ended December 31, 2009 compared to debt payments to holders of XM's 9.75% Senior Notes due 2014, XM's Senior Floating Rate Notes due 2013 and XM's Debt of Consolidated Variable Interest Entity during the year ended December 31, 2008.
- *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 XM's 7% Exchangeable Senior Subordinated Notes due 2014; \$613,400 in cash used to extinguish 99% of the principal and accrued interest on XM's 9.75% Senior Notes due 2014; \$203,500 in cash used to extinguish 100% of the principal, accrued interest and prepayment premiums on XM's Senior Floating Rate Notes due 2013; 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.

***Financings and Capital Requirements***

We have historically financed our operations through the sale of debt and equity securities. The Certificate of Designations for our Series B Preferred Stock provides that so long as Liberty beneficially owns at least half of its initial equity investment, we need the consent of Liberty for certain actions, including the grant or issuance of our equity securities and the incurrence of debt (other than, in general, debt incurred to refinance existing debt) in amounts greater than a stated threshold.

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

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. Our financial projections are based on assumptions, which we believe are reasonable but contain significant uncertainties.

We are the sole stockholder of XM Holdings 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. Similarly, under certain circumstances, XM may be unwilling or unable to contribute or loan SIRIUS capital. 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.

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. 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, including acquisitions that are not directly related to our satellite radio business. 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.

#### ***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 our cash and cash equivalents. As of December 31, 2009 and 2008, \$3,400 and \$141,250, respectively, was classified as restricted investments as a result of obligations under these letters of credit and escrow deposits. In February 2009, we released to programming providers an aggregate of \$138,000 held in escrow in satisfaction of future obligations under our agreements with them.

We do not have any significant off-balance sheet arrangements other than those disclosed in Note 15 to our consolidated financial statements in Item 8 of this Form 10-K that are reasonably likely to have a material effect on our financial condition, results of operations, liquidity, capital expenditures or capital resources.

#### ***2009 Long-Term Stock Incentive Plan***

In May 2009, our stockholders approved the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan (the "2009 Plan"). Employees, consultants and members of our board of directors are eligible to receive awards under the 2009 Plan, which 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 2009 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, 2009, approximately 274,425,000 shares of common stock were available for future grant under the 2009 Plan.

#### ***Other Plans***

SIRIUS and XM Holdings maintain four other share-based benefit plans — the XM Holdings 2007 Stock Incentive Plan, the Amended and Restated Sirius Satellite Radio 2003 Long-Term Stock Incentive Plan, the XM Holdings 1998 Shares Award Plan and the XM Holdings Talent Option Plan. These plans generally provide for the grant of stock options, restricted stock, restricted stock units and other stock based awards. No further awards may be made under these plans. Outstanding awards under these plans will be continued.

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

For a discussion of our "Contractual Cash Commitments" refer to Note 15 to our consolidated financial statements in Item 8 of this Annual Report on Form 10-K.

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

For a discussion of "Related Party Transactions" refer to Note 9 to our consolidated financial statements in Item 8 of this Annual Report on Form 10-K.

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

Our consolidated financial statements are prepared in accordance with U.S. GAAP, 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. Accounting estimates require the use of significant management assumptions and judgments as to future events, and the effect of those events cannot be predicted with certainty. The accounting estimates will change as new events occur, more experience is acquired and more information is obtained. We evaluate and update our assumptions and estimates on an ongoing basis and use outside experts to assist in that evaluation when we deem necessary. We have disclosed all significant accounting policies in Note 3 to our consolidated financial statements in Item 8 of this Annual Report on Form 10-K. 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 with and into XM Satellite Radio Holdings Inc., with XM Holdings becoming our wholly-owned subsidiary. The application of purchase accounting 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. 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.

We evaluate our indefinite life intangible assets for impairment on an annual basis. During the year ended December 31, 2008, we recorded \$4,766,190 of goodwill impairment. At December 31, 2009, our intangible assets with indefinite lives totaled \$2,333,654, and the remaining unamortized total basis of our intangible assets with definite lives was \$361,461.

*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. 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 four 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 operate the constellation. We currently expect our first three in-orbit SIRIUS satellites to operate effectively through 2015 and are evaluating the impact of current satellite operational data on the expected useful lives. 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 in 2005 and 2006. We estimate that the XM-3 and XM-4 satellites will meet their 15 year predicted useful lives, and that XM-1 and XM-2 satellite's useful lives will end in 2011. XM Holdings is constructing an additional XM satellite which is in storage awaiting its launch.

Certain of 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 2009 would have resulted in approximately \$19,432 of additional depreciation expense.

*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 daily rental fleet programs; non-refundable activation and other 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 which commences upon retail sale and activation. 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. These payments are included in Subscriber acquisition costs because 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, estimated to be approximately 3.5 years during 2009. The estimated term of a subscriber relationship is based on historical experience. 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 2009 would have resulted in approximately \$7,585 of additional activation fees.

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We record an estimate of rebates that are paid by us to subscribers 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 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.

Revenue arrangements with multiple deliverables are divided into separate units of accounting when the products and services meet certain criteria and consideration is allocated among the separate units of accounting based on their relative fair values.

*Share-based Payment.* We recognize all share-based compensation payments in the financial statements based on fair value using the Black-Scholes-Merton option-pricing model to value stock option awards and we treat awards with graded vesting as a single award. Forfeitures are estimated at the time of grant and revised in subsequent periods if actual forfeitures differ from initial estimates.

Fair value as 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 hybrid approach for volatility, which weights observable historical volatility and implied volatility of qualifying 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 recognized in earnings at the estimated fair value, which is remeasured during the performance commitment period. The final measurement date for the fair value of equity instruments 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 include warrants, stock options, restricted stock and restricted stock units.

*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, 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.

**Footnotes to Results of Operations**

- (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 vehicle owners and lessees 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 and lessees generally receive between three and twelve month trial subscriptions. 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 vehicle owners and lessees 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 subscriber and per subscriber amounts):

	<b>Unaudited Pro Forma</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Subscriber revenue	\$ 593,841	\$ 588,622	\$ 501,595
Net advertising revenue	14,467	15,776	20,571
<b>Total subscriber and net advertising revenue</b>	<b>\$ 608,308</b>	<b>\$ 604,398</b>	<b>\$ 522,166</b>
Daily weighted average number of subscribers	18,576,151	18,910,689	16,629,079
ARPU	\$ 10.92	\$ 10.65	\$ 10.47

- (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 subscriber and per subscriber amounts):

	<b>Unaudited Pro Forma</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Subscriber acquisition cost	\$ 127,588	\$ 132,731	\$ 190,090
Less: share-based payment expense granted to third parties and employees	—	—	(9,323)
<b>(Less) Add: margin from direct sales of radios and accessories</b>	<b>(6,808)</b>	<b>(12,628)</b>	<b>12,201</b>
SAC, as adjusted	\$ 120,780	\$ 120,103	\$ 192,968
Gross subscriber additions	1,882,950	1,713,210	2,336,640
SAC, as adjusted, per gross subscriber addition	\$ 64	\$ 70	\$ 83

- (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 subscriber and per subscriber amounts):

	<b>Unaudited Pro Forma</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Customer service and billing expenses	\$ 58,981	\$ 67,906	\$ 65,991
Less: share-based payment expense	(94)	(870)	(985)
Customer service and billing expenses, as adjusted	<u>\$ 58,887</u>	<u>\$ 67,036</u>	<u>\$ 65,006</u>
Daily weighted average number of subscribers	18,576,151	18,910,689	16,629,079
Customer service and billing expenses, as adjusted, per average subscriber	\$ 1.06	\$ 1.18	\$ 1.30

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

	<b>Unaudited Pro Forma</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Net cash provided by operating activities	\$ 180,723	\$ 64,195	\$ 30,957
Additions to property and equipment	(31,176)	(27,846)	(18,954)
Merger related costs	—	(10,472)	(6,680)
Restricted and other investment activity	—	—	82
Free cash flow	<u>\$ 149,547</u>	<u>\$ 25,877</u>	<u>\$ 5,405</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. 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 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 income (loss) before interest and investment income; interest expense, net of amounts capitalized; income tax expense; loss on extinguishment of debt and credit facilities, net; (gain) loss on investments; other expense (income); restructuring, impairments 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, impairments and related costs is useful given the non-recurring nature of these expenses. 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 expense (income), 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, impairments and related costs 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 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 income (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) (in thousands):

	<b>Unaudited Pro Forma</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Reconciliation of Net loss to Adjusted income (loss) from operations:			
Net loss	\$ (25,243)	\$ (248,468)	\$ (405,041)
Add back Net loss items excluded from Adjusted income (loss) from operations:			
Interest and investment income	(1,043)	90	(6,978)
Interest expense, net of amounts capitalized	69,765	71,274	48,703
Income tax expense	2,637	175	901
Loss on extinguishment of debt and credit facilities, net	3,879	98,203	728
(Gain) loss on investments	(1,474)	27,418	3,768
Other (income) expense	(851)	5,664	5,834
Income (loss) from operations	47,670	(45,644)	(352,085)
Restructuring, impairments and related costs	2,640	2,977	—
Depreciation and amortization	57,549	49,519	75,045
Share-based payment expense	7,480	24,945	52,897
Adjusted income (loss) from operations	<u>\$ 115,339</u>	<u>\$ 31,797</u>	<u>\$ (224,143)</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 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:

<i>(in thousands)</i>	<b>Unaudited For the Three Months Ended December 31, 2009</b>			
	<b>As Reported</b>	<b>Purchase Price Accounting Adjustments</b>	<b>Allocation of Share-based Payment Expense</b>	<b>Pro Forma</b>
<b>Revenue:</b>				
Subscriber revenue, including effects of rebates	\$ 588,048	\$ 5,793	\$ —	\$ 593,841
Advertising revenue, net of agency fees	14,467	—	—	14,467
Equipment revenue	19,008	—	—	19,008
Other revenue	54,650	1,813	—	56,463
<b>Total revenue</b>	<b>676,173</b>	<b>7,606</b>	<b>—</b>	<b>683,779</b>
<b>Operating expenses (depreciation and amortization shown separately below) (1)</b>				
<b>Cost of services:</b>				
Satellite and transmission	24,597	327	170	25,094
Programming and content	77,297	17,361	(1,801)	92,857
Revenue share and royalties	100,355	24,172	—	124,527
Customer service and billing	58,887	94	(94)	58,887
Cost of equipment	12,200	—	—	12,200
Sales and marketing	76,308	3,522	331	80,161
Subscriber acquisition costs	109,733	17,855	—	127,588
General and administrative	44,601	350	(5,843)	39,108
Engineering, design and development	8,056	205	(243)	8,018
Depreciation and amortization	77,826	(20,277)	—	57,549
Restructuring, impairments and related costs	2,640	—	—	2,640
Share-based payment expense	—	—	7,480	7,480
<b>Total operating expenses</b>	<b>592,500</b>	<b>43,609</b>	<b>—</b>	<b>636,109</b>
Income (loss) from operations	83,673	(36,003)	—	47,670
<b>Other income (expense)</b>				
Interest and investment income	1,043	—	—	1,043
Interest expense, net of amounts capitalized	(66,358)	(3,407)	—	(69,765)
Loss on extinguishment of debt and credit facilities, net	(3,879)	—	—	(3,879)
Gain on investments	1,474	—	—	1,474
Other income	851	—	—	851
<b>Total other expense</b>	<b>(66,869)</b>	<b>(3,407)</b>	<b>—</b>	<b>(70,276)</b>
Income (loss) before income taxes	16,804	(39,410)	—	(22,606)
Income tax expense	(2,637)	—	—	(2,637)
<b>Net income (loss)</b>	<b>\$ 14,167</b>	<b>\$ (39,410)</b>	<b>\$ —</b>	<b>\$ (25,243)</b>

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

Satellite and transmission	\$ (276)	\$ 106	\$ —	\$ (170)
Programming and content	1,646	155	—	1,801
Customer service and billing	—	94	—	94
Sales and marketing	(474)	143	—	(331)
Subscriber acquisition costs	—	—	—	—
General and administrative	5,493	350	—	5,843
Engineering, design and development	38	205	—	243
<b>Total share-based payment expense</b>	<b>\$ 6,427</b>	<b>\$ 1,053</b>	<b>\$ —</b>	<b>\$ 7,480</b>



**Unaudited For the Three Months Ended December 31, 2008**

<i>(in thousands)</i>	<b>As Reported</b>	<b>Purchase Price Accounting Adjustments (a)</b>	<b>Allocation of Share- based Payment Expense</b>	<b>Pro Forma</b>
<b>Revenue:</b>				
Subscriber revenue, including effects of rebates	\$ 568,523	\$ 20,099	\$ —	\$ 588,622
Advertising revenue, net of agency fees	15,776	—	—	15,776
Equipment revenue	30,712	—	—	30,712
Other revenue	7,172	1,826	—	8,998
<b>Total revenue</b>	<b>622,183</b>	<b>21,925</b>	<b>—</b>	<b>644,108</b>
<b>Operating expenses (depreciation and amortization shown separately below) (1)</b>				
<b>Cost of services:</b>				
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
Restructuring, impairments and related costs	2,977	—	—	2,977
Share-based payment expense	—	—	24,945	24,945
<b>Total operating expenses</b>	<b>675,281</b>	<b>14,471</b>	<b>—</b>	<b>689,752</b>
(Loss) income from operations	(53,098)	7,454	—	(45,644)
<b>Other income (expense)</b>				
Interest and investment income	(90)	—	—	(90)
Interest expense, net of amounts capitalized	(61,196)	(10,078)	—	(71,274)
Loss on extinguishment of debt and credit facilities, net	(98,203)	—	—	(98,203)
Loss on investments	(27,418)	—	—	(27,418)
Other expense	(5,664)	—	—	(5,664)
<b>Total other expense</b>	<b>(192,571)</b>	<b>(10,078)</b>	<b>—</b>	<b>(202,649)</b>
Loss before income taxes	(245,669)	(2,624)	—	(248,293)
Income tax expense	(175)	—	—	(175)
<b>Net loss</b>	<b>\$ (245,844)</b>	<b>\$ (2,624)</b>	<b>\$ —</b>	<b>\$ (248,468)</b>

(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
<b>Total share-based payment expense</b>	<b>\$ 23,987</b>	<b>\$ 958</b>	<b>\$ —</b>	<b>\$ 24,945</b>

(a) Includes impairment of goodwill.

Unaudited For the Three Months Ended December 31, 2007

<i>(in thousands)</i>	<b>As Reported</b>	<b>Predecessor Financial Information</b>	<b>Allocation of Share-based Payment Expense</b>	<b>Pro Forma</b>
<b>Revenue:</b>				
Subscriber revenue, including effects of rebates	\$ 227,658	\$ 273,937	\$ —	\$ 501,595
Advertising revenue, net of agency fees	9,770	10,801	—	20,571
Equipment revenue	12,065	13,068	—	25,133
Other revenue	323	9,893	—	10,216
<b>Total revenue</b>	<b>249,816</b>	<b>307,699</b>	<b>—</b>	<b>557,515</b>
<b>Operating expenses (depreciation and amortization shown separately below) (1)</b>				
<b>Cost of services:</b>				
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
<b>Total operating expenses</b>	<b>399,570</b>	<b>510,030</b>	<b>—</b>	<b>909,600</b>
<b>Loss from operations</b>	<b>(149,754)</b>	<b>(202,331)</b>	<b>—</b>	<b>(352,085)</b>
<b>Other income (expense)</b>				
Interest and investment income	4,171	2,807	—	6,978
Interest expense, net of amounts capitalized	(19,887)	(28,816)	—	(48,703)
Loss on extinguishment of debt and credit facilities, net	—	(728)	—	(728)
Loss on investments	—	(3,768)	—	(3,768)
Other income (expense)	17	(5,851)	—	(5,834)
<b>Total other expense</b>	<b>(15,699)</b>	<b>(36,356)</b>	<b>—</b>	<b>(52,055)</b>
<b>Loss before income taxes</b>	<b>(165,453)</b>	<b>(238,687)</b>	<b>—</b>	<b>(404,140)</b>
Income tax expense	(770)	(131)	—	(901)
<b>Net loss</b>	<b>\$ (166,223)</b>	<b>\$ (238,818)</b>	<b>\$ —</b>	<b>\$ (405,041)</b>

(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
<b>Total share-based payment expense</b>	<b>\$ 14,896</b>	<b>\$ 38,001</b>	<b>\$ —</b>	<b>\$ 52,897</b>

(10) ARPU is calculated as follows (in thousands, except for subscriber and per subscriber amounts):

	<b>Unaudited Pro Forma</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Subscriber revenue	\$ 2,334,317	\$ 2,258,322	\$ 1,888,709
Net advertising revenue	51,754	69,933	73,340
Total subscriber and net advertising revenue	<u>\$ 2,386,071</u>	<u>\$ 2,328,255</u>	<u>\$ 1,962,049</u>
Daily weighted average number of subscribers	18,529,696	18,373,274	15,342,041
ARPU	<u>\$ 10.73</u>	<u>\$ 10.56</u>	<u>\$ 10.66</u>

(11) SAC, as adjusted, per gross subscriber addition is calculated as follows (in thousands, except for subscriber and per subscriber amounts):

	<b>Unaudited Pro Forma</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Subscriber acquisition cost	\$ 401,670	\$ 577,140	\$ 666,785
Less: share-based payment expense granted to third parties and employees	—	(14)	(12,010)
(Less) Add: margin from direct sales of radios and accessories	(10,164)	(3,294)	40,206
SAC, as adjusted	<u>\$ 391,506</u>	<u>\$ 573,832</u>	<u>\$ 694,981</u>
Gross subscriber additions	6,208,482	7,710,306	8,077,674
SAC, as adjusted, per gross subscriber addition	<u>\$ 63</u>	<u>\$ 74</u>	<u>\$ 86</u>

(12) Customer service and billing expenses, as adjusted, per average subscriber is calculated as follows (in thousands, except for subscriber and per subscriber amounts):

	<b>Unaudited Pro Forma</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Customer service and billing expenses	\$ 234,909	\$ 248,176	\$ 220,593
Less: share-based payment expense	(2,504)	(3,981)	(3,191)
Customer service and billing expenses, as adjusted	<u>\$ 232,405</u>	<u>\$ 244,195</u>	<u>\$ 217,402</u>
Daily weighted average number of subscribers	18,529,696	18,373,274	15,342,041
Customer service and billing expenses, as adjusted, per average subscriber	<u>\$ 1.05</u>	<u>\$ 1.11</u>	<u>\$ 1.18</u>

(13) Free cash flow is calculated as follows (in thousands):

	<b>Unaudited Pro Forma</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Net cash provided by (used in) operating activities	\$ 433,830	\$ (403,883)	\$ (303,496)
Additions to property and equipment	(248,511)	(161,394)	(198,602)
Merger related costs	—	(23,519)	(29,444)
Restricted and other investment activity	—	37,025	26,673
Free cash flow	<u>\$ 185,319</u>	<u>\$ (551,771)</u>	<u>\$ (504,869)</u>

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

	<b>Unaudited Pro Forma</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Reconciliation of Net loss to Adjusted income (loss) from operations:			
Net loss	\$ (441,333)	\$ (902,335)	\$ (1,247,633)
Add back Net loss items excluded from Adjusted income (loss) from operations:			
Interest and investment income	(3,645)	(12,092)	(34,654)
Interest expense, net of amounts capitalized	324,442	235,655	186,933
Income tax expense	5,981	3,988	1,496
Loss on extinguishment of debt and credit facilities, net	267,646	98,203	3,693
(Gain) loss on investments	(1,931)	43,517	56,156
Other (income) expense	(3,355)	16,142	9,482
Income (loss) from operations	147,805	(516,922)	(1,024,527)
Restructuring, impairments and related costs	32,807	10,434	—
Depreciation and amortization	203,145	245,571	293,976
Share-based payment expense	78,782	124,619	165,099
Adjusted income (loss) from operations	<u>\$ 462,539</u>	<u>\$ (136,298)</u>	<u>\$ (565,452)</u>

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

<i>(in thousands)</i>	<b>Unaudited For the Year Ended December 31, 2009</b>			
	<b>As Reported</b>	<b>Purchase Price Accounting Adjustments</b>	<b>Allocation of Share-based Payment Expense</b>	<b>Pro Forma</b>
<b>Revenue:</b>				
Subscriber revenue, including effects of rebates	\$ 2,287,503	\$ 46,814	\$ —	\$ 2,334,317
Advertising revenue, net of agency fees	51,754	—	—	51,754
Equipment revenue	50,352	—	—	50,352
Other revenue	83,029	7,251	—	90,280
<b>Total revenue</b>	<b>2,472,638</b>	<b>54,065</b>	<b>—</b>	<b>2,526,703</b>
<b>Operating expenses (depreciation and amortization shown separately below) (1)</b>				
<b>Cost of services:</b>				
Satellite and transmission	84,033	1,339	(3,202)	82,170
Programming and content	308,121	72,069	(9,720)	370,470
Revenue share and royalties	397,210	89,780	—	486,990
Customer service and billing	234,456	453	(2,504)	232,405
Cost of equipment	40,188	—	—	40,188
Sales and marketing	228,956	13,507	(10,264)	232,199
Subscriber acquisition costs	340,506	61,164	—	401,670
General and administrative	227,554	1,602	(47,236)	181,920
Engineering, design and development	41,031	977	(5,856)	36,152
Depreciation and amortization	309,450	(106,305)	—	203,145
Restructuring, impairments and related costs	32,807	—	—	32,807
Share-based payment expense	—	—	78,782	78,782
<b>Total operating expenses</b>	<b>2,244,312</b>	<b>134,586</b>	<b>—</b>	<b>2,378,898</b>
Income (loss) from operations	228,326	(80,521)	—	147,805
<b>Other income (expense)</b>				
Interest and investment income	3,645	—	—	3,645
Interest expense, net of amounts capitalized	(306,420)	(18,022)	—	(324,442)
Loss on extinguishment of debt and credit facilities, net	(267,646)	—	—	(267,646)
Gain on investments	1,931	—	—	1,931
Other income	3,355	—	—	3,355
<b>Total other expense</b>	<b>(565,135)</b>	<b>(18,022)</b>	<b>—</b>	<b>(583,157)</b>
Loss before income taxes	(336,809)	(98,543)	—	(435,352)
Income tax expense	(5,981)	—	—	(5,981)
<b>Net loss</b>	<b>\$ (342,790)</b>	<b>\$ (98,543)</b>	<b>\$ —</b>	<b>\$ (441,333)</b>

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

Satellite and transmission	\$ 2,745	\$ 457	\$ —	\$ 3,202
Programming and content	9,064	656	—	9,720
Customer service and billing	2,051	453	—	2,504
Sales and marketing	9,608	656	—	10,264
Subscriber acquisition costs	—	—	—	—
General and administrative	45,634	1,602	—	47,236
Engineering, design and development	4,879	977	—	5,856
<b>Total share-based payment expense</b>	<b>\$ 73,981</b>	<b>\$ 4,801</b>	<b>\$ —</b>	<b>\$ 78,782</b>

## Unaudited For the Year Ended December 31, 2008

<i>(in thousands)</i>	<b>As Reported</b>	<b>Predecessor Financial Information</b>	<b>Purchase Price Accounting Adjustments (a)</b>	<b>Allocation of Share-based Payment Expense</b>	<b>Pro Forma</b>
<b>Revenue:</b>					
Subscriber revenue, including effects of rebates	\$ 1,548,919	\$ 670,870	\$ 38,533	\$ —	\$ 2,258,322
Advertising revenue, net of agency fees	47,190	22,743	—	—	69,933
Equipment revenue	56,001	13,397	—	—	69,398
Other revenue	11,882	24,184	3,021	—	39,087
<b>Total revenue</b>	<b>1,663,992</b>	<b>731,194</b>	<b>41,554</b>	<b>—</b>	<b>2,436,740</b>
<b>Operating expenses (depreciation and amortization shown separately below) (1)</b>					
<b>Cost of services:</b>					
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
Restructuring, impairments and related costs	10,434	—	—	—	10,434
Share-based payment expense	—	—	—	124,619	124,619
<b>Total operating expenses</b>	<b>6,700,741</b>	<b>961,663</b>	<b>(4,708,742)</b>	<b>—</b>	<b>2,953,662</b>
<b>(Loss) income from operations</b>	<b>(5,036,749)</b>	<b>(230,469)</b>	<b>4,750,296</b>	<b>—</b>	<b>(516,922)</b>
<b>Other income (expense)</b>					
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 on extinguishment of debt and credit facilities, net	(98,203)	—	—	—	(98,203)
Loss on investments	(30,507)	(13,010)	—	—	(43,517)
Other expense	(9,599)	(6,543)	—	—	(16,142)
<b>Total other expense</b>	<b>(274,063)</b>	<b>(90,477)</b>	<b>(16,885)</b>	<b>—</b>	<b>(381,425)</b>
<b>(Loss) income before income taxes</b>	<b>(5,310,812)</b>	<b>(320,946)</b>	<b>4,733,411</b>	<b>—</b>	<b>(898,347)</b>
Income tax expense	(2,476)	(1,512)	—	—	(3,988)
<b>Net (loss) income</b>	<b>\$ (5,313,288)</b>	<b>\$ (322,458)</b>	<b>\$ 4,733,411</b>	<b>\$ —</b>	<b>\$ (902,335)</b>

(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
<b>Total share-based payment expense</b>	<b>\$ 87,405</b>	<b>\$ 34,485</b>	<b>\$ 2,729</b>	<b>\$ —</b>	<b>\$ 124,619</b>

(a) Includes impairment of goodwill.

**Unaudited For the Year Ended December 31, 2007**

<i>(in thousands)</i>	<b>As Reported</b>	<b>Predecessor Financial Information</b>	<b>Allocation of Share-based Payment Expense</b>	<b>Pro Forma</b>
<b>Revenue:</b>				
Subscriber revenue, including effects of rebates	\$ 854,933	\$ 1,033,776	\$ —	\$ 1,888,709
Advertising revenue, net of agency fees	34,192	39,148	—	73,340
Equipment revenue	29,281	28,333	—	57,614
Other revenue	3,660	35,285	—	38,945
<b>Total revenue</b>	<b>922,066</b>	<b>1,136,542</b>	<b>—</b>	<b>2,058,608</b>
<b>Operating expenses (depreciation and amortization shown separately below) (1)</b>				
<b>Cost of services:</b>				
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
<b>Total operating expenses</b>	<b>1,435,156</b>	<b>1,647,979</b>	<b>—</b>	<b>3,083,135</b>
<b>Loss from operations</b>	<b>(513,090)</b>	<b>(511,437)</b>	<b>—</b>	<b>(1,024,527)</b>
<b>Other income (expense)</b>				
Interest and investment income	20,570	14,084	—	34,654
Interest expense, net of amounts capitalized	(70,328)	(116,605)	—	(186,933)
Loss on extinguishment of debt and credit facilities, net	—	(3,693)	—	(3,693)
Loss on investments	—	(56,156)	—	(56,156)
Other income (expense)	31	(9,513)	—	(9,482)
<b>Total other expense</b>	<b>(49,727)</b>	<b>(171,883)</b>	<b>—</b>	<b>(221,610)</b>
<b>Loss before income taxes</b>	<b>(562,817)</b>	<b>(683,320)</b>	<b>—</b>	<b>(1,246,137)</b>
Income tax expense	(2,435)	939	—	(1,496)
<b>Net loss</b>	<b>\$ (565,252)</b>	<b>\$ (682,381)</b>	<b>\$ —</b>	<b>\$ (1,247,633)</b>

(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
<b>Total share-based payment expense</b>	<b>\$ 78,900</b>	<b>\$ 86,199</b>	<b>\$ —</b>	<b>\$ 165,099</b>

(16) ARPU is calculated as follows (in thousands, except for subscriber and per subscriber amounts):

	<b>Unaudited Actual</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Subscriber revenue	\$ 588,048	\$ 568,523	\$ 227,658
Net advertising revenue	14,467	15,776	9,770
Total subscriber and net advertising revenue	<u>\$ 602,515</u>	<u>\$ 584,299</u>	<u>\$ 237,428</u>
Daily weighted average number of subscribers	18,576,151	18,910,689	7,878,574
ARPU	\$ 10.81	\$ 10.30	\$ 10.05

(17) SAC, as adjusted, per gross subscriber addition is calculated as follows (in thousands, except for subscriber and per subscriber amounts):

	<b>Unaudited Actual</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Subscriber acquisition cost	\$ 109,733	\$ 113,512	\$ 100,062
Less: share-based payment expense granted to third parties and employees	—	—	(156)
(Less) Add: margin from direct sales of radios and accessories	(6,808)	(12,628)	3,821
SAC, as adjusted	<u>\$ 102,925</u>	<u>\$ 100,884</u>	<u>\$ 103,727</u>
Gross subscriber additions	1,882,950	1,713,210	1,194,014
SAC, as adjusted, per gross subscriber addition	\$ 55	\$ 59	\$ 87

(18) Customer service and billing expenses, as adjusted, per average subscriber is calculated as follows (in thousands, except for subscriber and per subscriber amounts):

	<b>Unaudited Actual</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Customer service and billing expenses	\$ 58,887	\$ 67,818	\$ 29,288
Less: share-based payment expense	—	(783)	(165)
Customer service and billing expenses, as adjusted	<u>\$ 58,887</u>	<u>\$ 67,035</u>	<u>\$ 29,123</u>
Daily weighted average number of subscribers	18,576,151	18,910,689	7,878,574
Customer service and billing expenses, as adjusted, per average subscriber	\$ 1.06	\$ 1.18	\$ 1.23

(19) Free cash flow is calculated as follows (in thousands):

	<b>Unaudited Actual</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Net cash provided by operating activities	\$ 180,723	\$ 64,195	\$ 89,818
Additions to property and equipment	(31,176)	(27,846)	(7,377)
Merger related costs	—	(10,472)	(6,680)
Restricted and other investment activity	—	—	160
Free cash flow	<u>\$ 149,547</u>	<u>\$ 25,877</u>	<u>\$ 75,921</u>



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

	<b>Unaudited Actual</b>		
	<b>For the Three Months Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Reconciliation of Net loss to Adjusted income (loss) from operations:			
Net loss	\$ 14,167	\$ (245,844)	\$ (166,223)
Add back Net loss items excluded from Adjusted income (loss) from operations:			
Interest and investment income	(1,043)	90	(4,171)
Interest expense, net of amounts capitalized	66,358	61,196	19,887
Income tax expense	2,637	175	770
Loss on extinguishment of debt and credit facilities, net	3,879	98,203	—
(Gain) loss on investments	(1,474)	27,418	—
Other (income) expense	(851)	5,664	(17)
Income (loss) from operations	83,673	(53,098)	(149,754)
Restructuring, impairments and related costs	2,640	2,977	—
Impairment of goodwill	—	15,331	—
Depreciation and amortization	77,826	82,958	27,638
Share-based payment expense	6,427	23,987	14,896
Adjusted income (loss) from operations	<u>\$ 170,566</u>	<u>\$ 72,155</u>	<u>\$ (107,220)</u>

(21) ARPU is calculated as follows (in thousands, except for subscriber and per subscriber amounts):

	<b>Unaudited Actual</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Subscriber revenue	\$ 2,287,503	\$ 1,548,919	\$ 854,933
Net advertising revenue	51,754	47,190	34,192
Total subscriber and net advertising revenue	<u>\$ 2,339,257</u>	<u>\$ 1,596,109</u>	<u>\$ 889,125</u>
Daily weighted average number of subscribers	18,529,696	13,378,035	7,082,927
ARPU	<u>\$ 10.52</u>	<u>\$ 9.94</u>	<u>\$ 10.46</u>

(22) SAC, as adjusted, per gross subscriber addition is calculated as follows (in thousands, except for subscriber and per subscriber amounts):

	<b>Unaudited Actual</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Subscriber acquisition cost	\$ 340,506	\$ 371,343	\$ 407,642
Less: share-based payment expense granted to third parties and employees	—	(14)	(2,843)
(Less) Add: margin from direct sales of radios and accessories	(10,164)	(9,910)	6,536
SAC, as adjusted	<u>\$ 330,342</u>	<u>\$ 361,419</u>	<u>\$ 411,335</u>
Gross subscriber additions	6,208,482	5,238,042	4,183,901
SAC, as adjusted, per gross subscriber addition	<u>\$ 53</u>	<u>\$ 69</u>	<u>\$ 98</u>

(23) Customer service and billing expenses, as adjusted, per average subscriber is calculated as follows (in thousands, except for subscriber and per subscriber amounts):

	<b>Unaudited Actual</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Customer service and billing expenses	\$ 234,456	\$ 165,036	\$ 93,817
Less: share-based payment expense	(2,051)	(1,920)	(708)
Customer service and billing expenses, as adjusted	<u>\$ 232,405</u>	<u>\$ 163,116</u>	<u>\$ 93,109</u>
Daily weighted average number of subscribers	18,529,696	13,378,035	7,082,927
Customer service and billing expenses, as adjusted, per average subscriber	<u>\$ 1.05</u>	<u>\$ 1.02</u>	<u>\$ 1.10</u>

(24) Free cash flow is calculated as follows (in thousands):

	<b>Unaudited Actual</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Net cash provided by (used in) operating activities	\$ 433,830	\$ (152,797)	\$ (148,766)
Additions to property and equipment	(248,511)	(130,551)	(65,264)
Merger related costs	—	(23,519)	(29,444)
Restricted and other investment activity	—	62,400	24,850
Free cash flow	<u>\$ 185,319</u>	<u>\$ (244,467)</u>	<u>\$ (218,624)</u>

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

	<b>Unaudited Actual</b>		
	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Reconciliation of Net loss to Adjusted income (loss) from operations:			
Net loss	\$ (342,790)	\$ (5,313,288)	\$ (565,252)
Add back Net loss items excluded from Adjusted income (loss) from operations:			
Interest and investment income	(3,645)	(9,079)	(20,570)
Interest expense, net of amounts capitalized	306,420	144,833	70,328
Income tax expense	5,981	2,476	2,435
Loss on extinguishment of debt and credit facilities, net	267,646	98,203	—
(Gain) loss on investments	(1,931)	30,507	—
Other (income) expense	<u>(3,355)</u>	<u>9,599</u>	<u>(31)</u>
Income (loss) from operations	228,326	(5,036,749)	(513,090)
Restructuring, impairments and related costs	32,807	10,434	—
Impairment of goodwill	—	4,766,190	—
Depreciation and amortization	309,450	203,752	106,780
Share-based payment expense	73,981	87,405	78,900
Adjusted income (loss) from operations	<u>\$ 644,564</u>	<u>\$ 31,032</u>	<u>\$ (327,410)</u>

#### ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISKS

As of December 31, 2009, 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 certificates of deposit, auction rate certificates and investments in debt and equity securities of other entities. 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 and variable rate instruments and the fair market value of our 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.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

See Index to Consolidated Financial Statements contained in Item 15 herein.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

*Controls and Procedures*

As of December 31, 2009, an evaluation was performed under the supervision and with the participation of our management, including Mel Karmazin, our Chief Executive Officer, and David J. Frear, our Executive Vice President and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on that evaluation, our management, including our Chief Executive Officer and our Chief Financial Officer, concluded that our disclosure controls and procedures were effective as of December 31, 2009. There has been no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting during the quarter ended December 31, 2009.

*Management's Report on Internal Control over Financial Reporting*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) under the Exchange Act. We have performed an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of our internal control over financial reporting. Our management used the framework in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations to perform this evaluation. Based on that evaluation, our management, including our Chief Executive Officer and Chief Financial Officer, concluded that our internal control over financial reporting was effective as of December 31, 2009.

*Audit Report of the Independent Registered Public Accounting Firm*

The effectiveness of our internal control over financial reporting as of December 31, 2009 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their audit report appearing on page F-3 of this Annual Report on Form 10-K.

**ITEM 9B. OTHER INFORMATION**

None.

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information required by this item for executive officers is set forth under the heading “Executive Officers of the Registrant” in Part I, Item 1, of this report.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item is included in our definitive proxy statement for our 2010 annual meeting of stockholders scheduled to be held on Thursday, May 27, 2010, and is incorporated herein by reference.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this item is included in our definitive proxy statement for our 2010 annual meeting of stockholders scheduled to be held on Thursday, May 27, 2010, and is incorporated herein by reference.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this item is included in our definitive proxy statement for our 2010 annual meeting of stockholders scheduled to be held on Thursday, May 27, 2010, and is incorporated herein by reference.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this item is included in our definitive proxy statement for our 2010 annual meeting of stockholders scheduled to be held on Thursday, May 27, 2010, and is incorporated herein by reference.

**PART IV**

**ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

(a) Financial Statements, Financial Statement Schedules and Exhibits

- (1) Financial Statements. See Index to Consolidated Financial Statements appearing on page F-1.
- (2) Financial Statement Schedules. See Index to Consolidated Financial Statements appearing on page F-1.
- (3) Exhibits.

See Exhibit Index appearing on pages E-1 through E-6 for a list of exhibits filed or incorporated by reference as part of this Annual Report on Form 10-K.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on this 25<sup>th</sup> day of February 2010.

SIRIUS XM RADIO INC.

By: /s/ David J. Frear  
**David J. Frear**  
**Executive Vice President and**  
**Chief Financial Officer**  
**(Principal Financial Officer)**

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Eddy W. Hartenstein</u> <b>(Eddy W. Hartenstein)</b>	Chairman of the Board of Directors and Director	February 25, 2010
<u>/s/ Mel Karmazin</u> <b>(Mel Karmazin)</b>	Chief Executive Officer and Director (Principal Executive Officer)	February 25, 2010
<u>/s/ David J. Frear</u> <b>(David J. Frear)</b>	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	February 25, 2010
<u>/s/ Thomas D. Barry</u> <b>(Thomas D. Barry)</b>	Senior Vice President and Controller (Principal Accounting Officer)	February 25, 2010
<u>/s/ Joan L. Amble</u> <b>(Joan L. Amble)</b>	Director	February 25, 2010
<u>/s/ Leon D. Black</u> <b>(Leon D. Black)</b>	Director	February 25, 2010
<u>/s/ David A. Flowers</u> <b>(David A. Flowers)</b>	Director	February 25, 2010
<u>/s/ Lawrence F. Gilberti</u> <b>(Lawrence F. Gilberti)</b>	Director	February 25, 2010
<u>/s/ James P. Holden</u> <b>(James P. Holden)</b>	Director	February 25, 2010
<u>/s/ Chester A. Huber, Jr.</u> <b>(Chester A. Huber, Jr.)</b>	Director	February 25, 2010
<u>/s/ Gregory B. Maffei</u> <b>(Gregory B. Maffei)</b>	Director	February 25, 2010
<u>/s/ John C. Malone</u> <b>(John C. Malone)</b>	Director	February 25, 2010
<u>/s/ John W. Mendel</u> <b>(John W. Mendel)</b>	Director	February 25, 2010
<u>/s/ James F. Mooney</u> <b>(James F. Mooney)</b>	Director	February 25, 2010
<u>/s/ Jack Shaw</u> <b>(Jack Shaw)</b>	Director	February 25, 2010

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SIRIUS XM RADIO INC. AND SUBSIDIARIES

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<a href="#">Consolidated Statements of Operations for the years ended December 31, 2009, 2008 and 2007</a>	F-5
<a href="#">Consolidated Balance Sheets as of December 31, 2009 and 2008</a>	F-6
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**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 sheets of Sirius XM Radio Inc. and subsidiaries as of December 31, 2009 and 2008, and the related consolidated statements of operations, stockholders' equity (deficit) and comprehensive loss, and cash flows for each of the years then ended. In connection with our audits of the consolidated financial statements, we also have audited the financial statement schedule listed in Item 15(a)(2). 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 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 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, 2009 and 2008, and the results of their operations and their cash flows for each of the years 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, 2009, 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 February 25, 2010 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

New York, New York  
February 25, 2010



**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, 2009, 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, 2009, 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 sheets of Sirius XM Radio Inc. and subsidiaries as of December 31, 2009 and 2008, and the related consolidated statements of operations, stockholders' equity (deficit) and comprehensive loss, and cash flows for each of the years then ended, and our report dated February 25, 2010 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

New York, New York  
February 25, 2010

**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 statements of operations, stockholders' equity (deficit) and comprehensive loss, and cash flows of Sirius XM Radio Inc. and Subsidiaries for the year ended December 31, 2007. Our audit also included the financial statement schedule listed in the Index at Item 15(a)(2). 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 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 financial statements referred to above present fairly, in all material respects, the consolidated results of operations and cash flows of Sirius XM Radio Inc. and Subsidiaries for the year 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.

/s/ ERNST & YOUNG LLP

New York, NY  
February 29, 2008,  
except Note 17 related to the 2007 financial information, as to which  
the date is March 10, 2009.

SIRIUS XM RADIO INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

<i>(in thousands, except per share data)</i>	For the Years Ended December 31,		
	2009	2008	2007
<b>Revenue:</b>			
Subscriber revenue, including effects of rebates	\$ 2,287,503	\$ 1,548,919	\$ 854,933
Advertising revenue, net of agency fees	51,754	47,190	34,192
Equipment revenue	50,352	56,001	29,281
Other revenue	83,029	11,882	3,660
<b>Total revenue</b>	<b>2,472,638</b>	<b>1,663,992</b>	<b>922,066</b>
<b>Operating expenses (depreciation and amortization shown separately below)</b>			
<b>(1):</b>			
Cost of services:			
Satellite and transmission	84,033	59,279	27,907
Programming and content	308,121	312,189	236,059
Revenue share and royalties	397,210	280,852	146,715
Customer service and billing	234,456	165,036	93,817
Cost of equipment	40,188	46,091	35,817
Sales and marketing	228,956	231,937	183,213
Subscriber acquisition costs	340,506	371,343	407,642
General and administrative	227,554	213,142	155,863
Engineering, design and development	41,031	40,496	41,343
Impairment of goodwill	—	4,766,190	—
Depreciation and amortization	309,450	203,752	106,780
Restructuring, impairments and related costs	32,807	10,434	—
<b>Total operating expenses</b>	<b>2,244,312</b>	<b>6,700,741</b>	<b>1,435,156</b>
Income (loss) from operations	228,326	(5,036,749)	(513,090)
<b>Other income (expense):</b>			
Interest and investment income	3,645	9,079	20,570
Interest expense, net of amounts capitalized	(306,420)	(144,833)	(70,328)
Loss on extinguishment of debt and credit facilities, net	(267,646)	(98,203)	—
Gain (loss) on investments	1,931	(30,507)	—
Other income (expense)	3,355	(9,599)	31
<b>Total other expense</b>	<b>(565,135)</b>	<b>(274,063)</b>	<b>(49,727)</b>
Loss before income taxes	(336,809)	(5,310,812)	(562,817)
Income tax expense	(5,981)	(2,476)	(2,435)
Net loss	(342,790)	(5,313,288)	(565,252)
Preferred stock beneficial conversion feature	(186,188)	—	—
Net loss attributable to common stockholders	\$ (528,978)	\$ (5,313,288)	\$ (565,252)
Net loss per common share (basic and diluted)	\$ (0.15)	\$ (2.45)	\$ (0.39)
Weighted average common shares outstanding (basic and diluted)	<u>3,585,864</u>	<u>2,169,489</u>	<u>1,462,967</u>

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

Satellite and transmission	\$ 2,745	\$ 4,236	\$ 2,198
Programming and content	9,064	12,148	9,643
Customer service and billing	2,051	1,920	708
Sales and marketing	9,608	13,541	15,607
Subscriber acquisition costs	—	14	2,843
General and administrative	45,634	49,354	44,317
Engineering, design and development	4,879	6,192	3,584
<b>Total share-based payment expense</b>	<b>\$ 73,981</b>	<b>\$ 87,405</b>	<b>\$ 78,900</b>

See accompanying Notes to the consolidated financial statements.

SIRIUS XM RADIO INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

<i>(in thousands, except share and per share data)</i>	<b>As of December 31,</b>	
	<b>2009</b>	<b>2008</b>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 383,489	\$ 380,446
Accounts receivable, net	113,580	102,024
Receivables from distributors	48,738	45,950
Inventory, net	16,193	24,462
Prepaid expenses	100,273	67,203
Related party current assets	106,247	110,427
Deferred tax asset	72,640	31,270
Other current assets	18,620	27,474
Total current assets	859,780	789,256
Property and equipment, net	1,711,003	1,703,476
FCC licenses	2,083,654	2,083,654
Restricted investments	3,400	141,250
Deferred financing fees, net	8,902	9,197
Intangible assets, net	611,461	688,671
Goodwill	1,834,856	1,834,856
Related party long-term assets	110,594	128,357
Other long-term assets	39,878	81,019
Total assets	<u>\$ 7,263,528</u>	<u>\$ 7,459,736</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 543,686	\$ 625,264
Accrued interest	74,566	76,463
Current portion of deferred revenue	1,086,205	1,002,736
Current portion of deferred credit on executory contracts	252,831	234,774
Current maturities of long-term debt	13,882	399,726
Related party current liabilities	105,471	68,373
Total current liabilities	2,076,641	2,407,336
Deferred revenue	283,942	247,889
Deferred credit on executory contracts	784,078	1,037,190
Long-term debt	2,799,127	2,820,781
Long-term related party debt	263,566	—
Deferred tax liability	940,182	894,453
Related party long-term liabilities	17,508	—
Other long-term liabilities	61,052	43,550
Total liabilities	7,226,096	7,451,199
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Preferred stock, par value \$0.001; 50,000,000 authorized at December 31, 2009 and 2008:		
Series A convertible preferred stock (liquidation preference of \$51,370 at December 31, 2009 and 2008); 24,808,959 shares issued and outstanding at December 31, 2009 and 2008	25	25
Convertible perpetual preferred stock, series B (liquidation preference of \$13 and \$0 at December 31, 2009 and 2008, respectively); 12,500,000 and zero shares issued and outstanding at December 31, 2009 and 2008, respectively	13	—
Convertible preferred stock, series C junior; no shares issued and outstanding at December 31, 2009 and 2008	—	—
Common stock, par value \$0.001; 9,000,000,000 and 8,000,000,000 shares authorized at December 31, 2009 and 2008, respectively; 3,882,659,087 and 3,651,765,837 shares issued and outstanding at December 31, 2009 and 2008, respectively	3,882	3,652
Accumulated other comprehensive loss, net of tax	(6,581)	(7,871)
Additional paid-in capital	10,281,331	9,724,991
Accumulated deficit	(10,241,238)	(9,712,260)
Total stockholders' equity	37,432	8,537
Total liabilities and stockholders' equity	<u>\$ 7,263,528</u>	<u>\$ 7,459,736</u>

See accompanying Notes to the consolidated financial statements.

## SIRIUS XM RADIO INC. AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT) AND COMPREHENSIVE LOSS

<i>(in thousands, except share and per share data)</i>	Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount				
Balance at January 1, 2007	—	\$ —	—	\$ —	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										(565,252)
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 3 <sup>1</sup> / <sub>2</sub> % Convertible Notes due 2008, including accrued interest	—	—	—	—	2,321,737	2	3,180	—	—	3,182
Exchange of 2 <sup>1</sup> / <sub>2</sub> % Convertible Notes due 2009, including accrued interest	—	—	—	—	453	—	2	—	—	2
Balance at December 31, 2007	—	\$ —	—	\$ —	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 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 3 <sup>1</sup> / <sub>2</sub> % Convertible Notes due 2008, including accrued interest	—	—	—	—	24,131,155	24	33,478	—	—	33,502
Exchange of 2 <sup>1</sup> / <sub>2</sub> % Convertible Notes due 2009, including accrued interest	—	—	—	—	400,211,513	401	208,712	—	—	209,113
Restricted shares withheld for taxes upon vesting	—	—	—	—	—	—	(84)	—	—	(84)
Balance at December 31, 2008	24,808,959	\$ 25	—	\$ —	3,651,765,837	\$ 3,652	\$ 9,724,991	\$ (9,712,260)	\$ (7,871)	\$ 8,537

See accompanying Notes to the consolidated financial statements.

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

<i>(in thousands, except share and per share data)</i>	Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount				
Net loss								(342,790)		(342,790)
Other comprehensive loss:										
Unrealized gain on available-for-sale securities	—	—	—	—	—	—	—	—	473	473
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	817	817
Total comprehensive loss	—	—	—	—	—	—	—	—		(341,500)
Issuance of preferred stock — related party, net of issuance costs	—	—	12,500,000	13	—	—	410,179	(186,188)		224,004
Issuance of common stock to employees and employee benefit plans, net of forfeitures	—	—	—	—	8,511,009	8	2,622	—		2,630
Structuring fee on 10% Senior PIK Secured Notes due 2011	—	—	—	—	59,178,819	59	5,859	—		5,918
Share-based payment expense	—	—	—	—	—	—	71,388	—		71,388
Returned shares under share borrow agreements	—	—	—	—	(60,000,000)	(60)	60	—		—
Issuance of restricted stock units in satisfaction of accrued compensation	—	—	—	—	83,803,422	84	31,207	—		31,291
Exchange of 2½% Convertible Notes due 2009, including accrued interest	—	—	—	—	139,400,000	139	35,025	—		35,164
Balance at December 31, 2009	<u>24,808,959</u>	<u>\$ 25</u>	<u>12,500,000</u>	<u>\$ 13</u>	<u>3,882,659,087</u>	<u>\$ 3,882</u>	<u>\$ 10,281,331</u>	<u>\$ (10,241,238)</u>	<u>\$ (6,581)</u>	<u>\$ 37,432</u>

See accompanying Notes to the consolidated financial statements.

SIRIUS XM RADIO INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

<i>(in thousands)</i>	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b>Cash flows from operating activities:</b>			
Net loss	\$ (342,790)	\$ (5,313,288)	\$ (565,252)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	309,450	203,752	106,780
Impairment of goodwill	—	4,766,190	—
Non-cash interest expense, net of amortization of premium	33,818	(6,311)	4,269
Provision for doubtful accounts	30,602	21,589	9,002
Amortization of deferred income related to equity method investment	(2,776)	(1,156)	—
Loss on extinguishment of debt and credit facilities, net	267,646	98,203	—
Restructuring, impairments and related costs	26,964	—	—
Loss (gain) on disposal of assets	—	4,879	(428)
Loss on investments	13,664	28,999	—
Share-based payment expense	73,981	87,405	78,900
Deferred income taxes	5,981	2,476	2,435
Other non-cash purchase price adjustments	(202,054)	(68,330)	—
Other	—	1,643	—
Changes in operating assets and liabilities:			
Accounts receivable	(42,158)	(32,121)	(28,881)
Inventory	8,269	8,291	4,965
Receivables from distributors	(2,788)	14,401	(13,179)
Related party assets	15,305	(22,249)	(1,241)
Prepaid expenses and other current assets	10,027	(19,953)	11,118
Other long-term assets	86,674	(5,490)	13,691
Accounts payable and accrued expenses	(46,645)	(83,037)	52,492
Accrued interest	2,429	23,081	(8,920)
Deferred revenue	89,144	73,334	183,582
Related party liabilities	54,606	34,646	—
Other long-term liabilities	44,481	30,249	1,901
Net cash provided by (used in) operating activities	<u>433,830</u>	<u>(152,797)</u>	<u>(148,766)</u>
<b>Cash flows from investing activities:</b>			
Additions to property and equipment	(248,511)	(130,551)	(65,264)
Sales of property and equipment	—	105	641
Purchases of restricted and other investments	—	(3,000)	(310)
Acquisition of acquired entity cash	—	819,521	—
Merger related costs	—	(23,519)	(29,444)
Sale of restricted and other investments	—	65,869	40,191
Net cash (used in) provided by investing activities	<u>(248,511)</u>	<u>728,425</u>	<u>(54,186)</u>
<b>Cash flows from financing activities:</b>			
Proceeds from exercise of warrants and stock options	—	471	4,097
Preferred stock issuance costs, net of costs	(3,712)	—	—
Long-term borrowings, net of costs	582,612	531,743	244,879
Related party long-term borrowings, net of costs	362,593	—	—
Payment of premiums on redemption of debt	(17,075)	(18,693)	—
Payments to noncontrolling interest	—	(61,880)	—
Repayment of long-term borrowings	(755,447)	(1,085,643)	(625)
Repayment of related party long-term borrowings	(351,247)	—	—
Net cash (used in) provided by financing activities	<u>(182,276)</u>	<u>(634,002)</u>	<u>248,351</u>
Net increase (decrease) in cash and cash equivalents	3,043	(58,374)	45,399
Cash and cash equivalents at beginning of period	380,446	438,820	393,421
Cash and cash equivalents at end of period	<u>\$ 383,489</u>	<u>\$ 380,446</u>	<u>\$ 438,820</u>

See accompanying Notes to the consolidated financial statements.

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

<i>(in thousands)</i>	For the Years Ended December 31,		
	2009	2008	2007
<b>Supplemental Disclosure of Cash and Non-Cash Flow Information Cash</b>			
paid during the period for:			
Interest, net of amounts capitalized	\$ 257,328	\$ 137,542	\$ 66,266
<b>Non-cash investing and financing activities:</b>			
Share-based payments in satisfaction of accrued compensation	31,291	8,729	7,949
Common stock issued in exchange of 3½% Convertible Notes due 2008, including accrued interest	—	33,502	3,182
Common stock issued in exchange of 2½% Convertible Notes due 2009, including accrued interest	18,000	209,113	2
Structuring fee on 10% Senior PIK Secured Notes due 2011	5,918	—	—
Preferred stock issued to Liberty Media	227,716	—	—
Release of restricted investments	137,850	—	—
Common stock issued to third parties	—	—	82,941
Equity issued in the acquisition of XM	—	5,784,976	—
In-orbit satellite performance incentives	14,905	—	—

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 our music, sports, news, talk, entertainment, traffic and weather channels in the United States for a subscription fee through our proprietary satellite radio systems — the SIRIUS system and the XM system. In July 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 four in-orbit satellites, over 125 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. The XM system consists of four in-orbit satellites, over 650 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”); nationwide through 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.

Our primary source of revenue is subscription fees, with most of our customers subscribing to an annual, semi-annual, quarterly or monthly plan. We also derive revenue from activation and other 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.

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., XM Satellite Radio Inc. and their respective 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.

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

**(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 (“GAAP”). All significant intercompany transactions have been eliminated in consolidation.

*Basis of Presentation*

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. We accounted for the Merger as an acquisition of XM Holdings under the purchase method of accounting for business combinations. The acquisition cost approximated \$5,836,363, including transaction cost, and was allocated to the underlying net assets acquired, based on the respective estimated fair values. This allocation included intangible assets, such as FCC licenses, customer relationships, license agreements and trademarks. The excess of the purchase price over the estimated fair values of the net assets acquired was recorded as goodwill. Because the Merger was consummated on July 28, 2008, the accompanying financial statements and notes for periods prior to that date reflect only the financial results of Sirius Satellite Radio Inc., as predecessor to Sirius XM Radio Inc. and are therefore not comparable to our financial results for 2009 and the fourth quarter of 2008.

We have evaluated events subsequent to the balance sheet date and prior to filing of this Annual Report on Form 10-K for the year ended December 31, 2009 through February 25, 2010 and determined there have not been any events that have occurred that would require adjustment to our consolidated financial statements.

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

*Use of Estimates*

In presenting consolidated financial statements, management makes estimates and assumptions that affect the amounts reported and accompanying notes. 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 materially from those estimates.

Significant estimates inherent in the preparation of the accompanying consolidated financial statements include revenue recognition, asset impairment, useful lives of our satellites, share-based payment expense, and valuation allowances against deferred tax assets. The economic conditions in the United States have impacted our business. Such conditions could have a material impact to our accounting estimates.

*Recent Accounting Pronouncements*

In September 2009, Accounting Standards Codification (“ASC”) became the source of authoritative GAAP recognized by the Financial Accounting Standards Board (“FASB”) for nongovernmental entities, except for certain FASB Statements not yet incorporated into ASC. Rules and interpretive releases of the SEC under federal securities laws are also sources of authoritative GAAP for registrants. The discussion below includes the applicable ASC reference.

In July 2009, the FASB proposed an update to ASC 470 to incorporate the previously ratified EITF No. 09-1, *Accounting for Own-Share Lending Arrangements in Contemplation of Convertible Debt Issuance* into the ASC. This proposed standard would require share-lending arrangements in an entity’s own shares to be initially measured at fair value and treated as an issuance cost, excluded from basic and diluted earnings per share, and recognize a charge to earnings if it becomes probable the counterparty will default on the arrangement. This guidance was adopted as of January 1, 2010, as required, on a retrospective basis for all arrangements outstanding as of that date. We will recognize an aggregate increase in the deferred financing costs associated with XM’S 7% Exchangeable Senior Subordinated Notes due 2014 of approximately \$378,000 as of the Merger date, offset by approximately \$30,000 of accumulated amortization through December 31, 2009.

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

We adopted ASC 855, *Subsequent Events*, which requires disclosure of events occurring after the balance sheet date but before financial statements are issued or are available to be issued. We adopted this guidance effective April 1, 2009, with no impact on our consolidated results of operations or financial position.

In June 2009, the FASB issued Statement No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles*, which integrated existing accounting standards with other authoritative guidance to provide a single source of authoritative GAAP for nongovernmental entities. Statement 168 has not been incorporated into ASC and is effective for interim and annual periods ending after September 15, 2009. We adopted this guidance effective July 1, 2009, with no impact on our consolidated results of operations or financial position.

***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 daily rental fleet programs; non-refundable activation and other 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 which commences upon retail sale and activation. 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. These payments are included in Subscriber acquisition costs because 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, estimated to be approximately 3.5 years during 2009. The estimated term of a subscriber relationship is based on historical experience.

We record an estimate of rebates that are paid by us to subscribers 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 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.

ASC 605, *Revenue Recognition*, 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***

Programming costs which are for a specified number of events are amortized on an event-by-event basis; programming costs which are for a specified season or period are amortized over the season or period 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.

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

***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, 2009, 2008 and 2007, we recorded advertising costs of \$128,784, \$109,253 and \$107,485, 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 ASC 718, *Compensation — Stock Compensation*. ASC 718 requires all share-based compensation payments to be recognized in the financial statements based on fair value using an option pricing model. ASC 718 requires forfeitures to be estimated at the time of grant and revised 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 as 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 hybrid approach for volatility, which weights observable historical volatility and implied volatility of qualifying 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 ASC 505, *Equity*. 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 include warrants, stock options, restricted stock and restricted stock units.

***Subscriber Acquisition Costs***

Subscriber acquisition costs consist of costs incurred to acquire new subscribers and 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; and provisions for inventory allowance. 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 automaker confirms receipt.

We record product warranty obligations in accordance with ASC 460, *Guarantees*, which 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.

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

**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, 2009, 2008 and 2007, we recorded research and development costs of \$38,852, \$41,362 and \$38,082, respectively. These costs are reported as a component of Engineering, design and development expense in our consolidated statements of operations.

**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, 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.

ASC 740, *Income Taxes*, 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.

We report revenues net of any tax assessed by a governmental authority that is both imposed on, and concurrent with, a specific revenue-producing transaction between a seller and a customer in our consolidated statements of operations.

**Net (Loss) Income per Common 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 3,381,905,000, 787,000,000 and 165,000,000 for the years ended December 31, 2009, 2008 and 2007, respectively, were not included in the calculation of diluted net loss per common share as the effect would have been anti-dilutive.

**Cash and Cash Equivalents**

Cash and cash equivalents consist of cash on hand, money market funds, certificates of deposit, in-transit credit card receipts and highly liquid 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. Our allowance for doubtful accounts considers historical experience, the age of amounts due, current economic conditions and other factors that may affect the debtor's ability to pay.

Accounts receivable, net, consists of the following:

	<b>December 31,</b>	
	<b>2009</b>	<b>2008</b>
Gross accounts receivable	\$ 122,247	\$ 112,884
Allowance for doubtful accounts	(8,667)	(10,860)
Total accounts receivable, net	\$ 113,580	\$ 102,024

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

***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.

Inventory, net, consists of the following:

	<b>December 31,</b>	
	<b>2009</b>	<b>2008</b>
Raw materials	\$ 17,370	\$ 11,648
Finished goods	19,704	38,323
Allowance for obsolescence	(20,881)	(25,509)
Total inventory, net	\$ 16,193	\$ 24,462

***Investments***

***Marketable 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 \$0, \$5,469 and \$15,031 for the years ended December 31, 2009, 2008 and 2007, respectively. We recorded \$473 of net unrealized gains on marketable securities for the year ended December 31, 2009 and \$1,040 of net unrealized losses on marketable securities for the year ended December 31, 2008.

***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 \$0, \$60,400 and \$25,160 for the years ended December 31, 2009, 2008 and 2007, 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 investments 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.

ASC 820, *Fair Value Measurements and Disclosures*, 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**  
(Dollar amounts in thousands, unless otherwise stated)

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, including satellites, are 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	5 — 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
Leaschold improvements	Lesser of useful life or remaining lease term

We review long-lived assets, such as property and equipment, and purchased intangibles subject to amortization 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 annually in early October, or more frequently if indicators of impairment exist. 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.

Other intangible assets with indefinite lives are tested for impairment at least annually or more frequently if indicators of impairment exist.

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 ASC 360-10-35, *Property, Plant and Equipment/Overall/Subsequent Measurement*.

***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, 2009 and 2008, the carrying amounts of cash and cash equivalents, accounts and other receivables, and accounts payable approximated fair value due to the short-term nature of these instruments.

The fair value for publicly traded instruments is determined using quoted market prices and, for non-publicly traded instruments, fair value is based upon estimates from a market maker and brokerage firm. As of December 31, 2009 and 2008, the carrying value of our long-term debt was \$3,076,575 and \$3,220,507, respectively; and the fair value approximated \$3,195,375 and \$1,211,613, respectively.

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

**Reclassifications**

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

**(4) Goodwill**

We allocated the consideration paid in connection with the Merger to the fair value of acquired assets and assumed liabilities, respectively, and in 2008 recorded goodwill in the amount of \$6,601,046. During 2008, we recorded an impairment charge of \$4,766,190, resulting in a carrying value of \$1,834,856 at December 31, 2008. There has not been any change in the carrying value of goodwill during 2009.

**(5) Intangible Assets**

Intangible assets consisted of the following:

	Weighted Average Useful Lives	December 31, 2009			December 31, 2008		
		Gross Carrying Value	Accumulated Amortization	Net Carrying Value	Gross Carrying Value	Accumulated Amortization	Net Carrying Value
<b>Indefinite life intangible assets</b>							
FCC licenses	Indefinite	\$ 2,083,654	\$ —	\$ 2,083,654	\$ 2,083,654	\$ —	\$ 2,083,654
Trademark	Indefinite	250,000	—	250,000	250,000	—	250,000
<b>Definite life intangible assets</b>							
<b>Subscriber relationships</b>							
Proprietary software	9 years	\$ 380,000	\$ (91,186)	\$ 288,814	\$ 380,000	\$ (29,226)	\$ 350,774
Developed technology	6 years	16,552	(6,823)	9,729	16,552	(2,285)	14,267
Licensing agreements	10 years	2,000	(283)	1,717	2,000	(83)	1,917
Leasehold interests	9.1 years	75,000	(13,906)	61,094	75,000	(4,090)	70,910
	7.4 years	132	(25)	107	908	(105)	803
Total intangible assets		<u>\$ 2,807,338</u>	<u>\$ (112,223)</u>	<u>\$ 2,695,115</u>	<u>\$ 2,808,114</u>	<u>\$ (35,789)</u>	<u>\$ 2,772,325</u>

*Indefinite Life Intangible Assets*

We have identified our FCC licenses and the XM trademark as indefinite life intangible assets 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 our satellite digital audio radio service and provide ancillary services. The following table outlines the years in which each of our licenses expire:

<u>FCC license</u>	<u>Expiration year</u>
SIRIUS FM-1 satellite	2017
SIRIUS FM-2 satellite	2017
SIRIUS FM-3 satellite	2017
SIRIUS FM-4 ground spare satellite	2017
SIRIUS FM-5 satellite	2017
XM-1 satellite	2014
XM-2 satellite	2014
XM-3 satellite	2013
XM-4 satellite	2014



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

Prior to the expirations, we will be required to apply for a renewal of our FCC licenses. The renewal and extension of our licenses is reasonably certain at minimal cost which is expensed as incurred. 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 trademark. As of December 31, 2009, there are no legal, regulatory or contractual limitations associated with the XM trademark.

We evaluate our indefinite life intangible assets for impairment on an annual basis. During the year ended December 31, 2009, no impairment loss was recorded for intangible assets with indefinite lives.

*Definite Life Intangible Assets*

Definite life intangible 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 intangible assets include certain licensing agreements of \$75,000, which are being amortized over a weighted average useful life of 9.1 years on a straight-line basis.

Amortization expense was \$76,587, \$35,789 and \$0 for the years ended December 31, 2009, 2008 and 2007, respectively. Expected amortization expense for each of the fiscal years through December 31, 2014 and for periods thereafter is as follows:

<u>Year ending December 31,</u>	<u>Amount</u>
2010	\$ 65,916
2011	58,850
2012	53,420
2013	47,097
2014	38,619
Thereafter	<u>97,559</u>
<b>Total definite life intangibles, net</b>	<b><u>\$ 361,461</u></b>

**(6) Subscriber Revenue**

Subscriber revenue consists of subscription fees, revenue derived from our agreements with daily rental fleet programs, non-refundable activation and other fees and the effects of rebates. Revenues received from automakers for prepaid subscriptions included in the sale or lease price of vehicles are also included in subscriber revenue over the service period, after sale or subscriber activation.

Subscriber revenue consists of the following:

	<u>For the Years Ended December 31,</u>		
	<u>2009</u>	<u>2008</u>	<u>2007</u>
Subscription fees	\$ 2,266,809	\$ 1,529,726	\$ 853,832
Activation fees	21,837	23,025	20,878
Effect of rebates	(1,143)	(3,832)	(19,777)
Total subscriber revenue	<u>\$ 2,287,503</u>	<u>\$ 1,548,919</u>	<u>\$ 854,933</u>

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

**(7) 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:

	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Interest costs charged to expense	\$ 306,420	\$ 144,833	\$ 70,328
Interest costs capitalized	61,201	20,872	8,914
<b>Total interest costs incurred</b>	<b>\$ 367,621</b>	<b>\$ 165,705</b>	<b>\$ 79,242</b>

Included in interest costs incurred is non-cash interest expense, consisting of amortization related to original issue discounts, premiums and deferred financing fees. This non-cash interest was \$33,818, (\$6,311) and \$4,269 for the years ended December 31, 2009, 2008 and 2007, respectively.

**(8) Property and Equipment**

Property and equipment, net, consists of the following:

	<b>December 31,</b>	
	<b>2009</b>	<b>2008</b>
Satellite system	\$ 1,680,732	\$ 1,414,625
Terrestrial repeater network	108,841	109,228
Leasehold improvements	43,480	42,878
Broadcast studio equipment	49,965	49,186
Capitalized software and hardware	146,035	132,555
Satellite telemetry, tracking and control facilities	55,965	56,217
Furniture, fixtures, equipment and other	57,536	57,995
Land	38,411	38,411
Building	56,424	56,392
Construction in progress	430,543	474,716
<b>Total property and equipment</b>	<b>2,667,932</b>	<b>2,432,203</b>
Accumulated depreciation and amortization	(956,929)	(728,727)
<b>Property and equipment, net</b>	<b>\$ 1,711,003</b>	<b>\$ 1,703,476</b>

Construction in progress consists of the following:

	<b>December 31,</b>	
	<b>2009</b>	<b>2008</b>
Satellite system	\$ 398,425	\$ 449,129
Terrestrial repeater network	19,396	19,070
Other	12,722	6,517
<b>Construction in progress</b>	<b>\$ 430,543</b>	<b>\$ 474,716</b>

Depreciation and amortization expense on property and equipment was \$232,863, \$167,963 and \$106,780 for the years ended December 31, 2009, 2008 and 2007, respectively.

**Satellites**

SIRIUS' initial three orbiting satellites were successfully launched in 2000. Our spare SIRIUS satellite was delivered to ground storage in 2002. SIRIUS' original three-satellite constellation and terrestrial repeater network were placed into service in 2002. In June 2009, SIRIUS launched a satellite into a geostationary orbit and placed it into service in August 2009 along with SIRIUS' other three orbiting satellites.

SIRIUS has an agreement with Space Systems/Loral for the design and construction of a sixth SIRIUS satellite. In January 2008, SIRIUS entered into an agreement with International Launch Services ("ILS") to secure a satellite launch on a Proton rocket.

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

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.

Space Systems/Loral has constructed a fifth satellite, XM-5, for use in the XM system. In 2006, XM entered into an agreement with Sea Launch to secure a launch for XM-5. In June 2009, Sea Launch filed for bankruptcy protection under Title 11 of the United States Code and as a result, we recorded a charge of \$24,196 to Restructuring, impairments and related costs in our consolidated statements of operations for amounts previously paid, including capitalized interest. In October 2009, XM Holdings terminated its satellite launch agreement with Sea Launch with the consent of the Bankruptcy Court. In October 2009, we entered into an agreement with ILS to secure a satellite launch for XM-5 on a Proton rocket.

**(9) Related Party Transactions**

We had the following related party balances at December 31, 2009 and 2008:

	Related party current assets		Related party long-term assets		Related party current liabilities		Related party long-term liabilities		Related party long-term debt	
	December 31,		December 31,		December 31,		December 31,		December 31,	
	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008
Liberty Media	\$ —	\$ —	\$ 801	\$ —	\$ 8,523	\$ —	\$ —	\$ —	\$ 263,566	\$ —
SIRIUS Canada	2,327	1,814	—	—	—	1,160	—	—	—	—
XM Canada	1,011	1,844	24,429	12,061	—	—	—	—	—	—
General Motors	99,995	104,575	85,364	116,296	93,107	63,023	17,508	—	—	—
American Honda	2,914	2,194	—	—	3,841	4,190	—	—	—	—
Total	<u>\$106,247</u>	<u>\$110,427</u>	<u>\$110,594</u>	<u>\$128,357</u>	<u>\$105,471</u>	<u>\$68,373</u>	<u>\$17,508</u>	<u>\$ —</u>	<u>\$263,566</u>	<u>\$ —</u>

**Liberty Media**

Liberty Media Corporation and its affiliate, Liberty Media, LLC (collectively, “Liberty Media”), is the holder of our Convertible Perpetual Preferred Stock, Series B (the “Series B Preferred Stock”), has representatives on our board of directors and is considered a related party. See Note 11, Debt, to our consolidated financial statements for further information regarding indebtedness previously owed to Liberty Media.

*Investment Agreement*

On February 17, 2009, we entered into an Investment Agreement (the “Investment Agreement”) with Liberty Media. Pursuant to the Investment Agreement, in March 2009 we issued to Liberty Radio, LLC 12,500,000 shares of Series B Preferred Stock with a liquidation preference of \$0.001 per share in partial consideration for certain loan investments.

The Series B Preferred Stock is convertible into approximately 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 Series B 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.

We accounted for the Series B Preferred Stock by recording a \$227,716 increase to additional paid-in capital, excluding issuance costs, for the amount of allocated proceeds received and an additional \$186,188 increase in paid-in capital for the beneficial conversion feature, which was immediately recognized as a charge to retained earnings.

*Loan Investments*

On February 17, 2009, SIRIUS entered into a Credit Agreement (the “LM Credit Agreement”) with Liberty Media Corporation, as administrative agent and collateral agent, and Liberty Media, LLC, as lender. The LM Credit Agreement provided for a \$250,000 term loan and \$30,000 of purchase money loans. In August 2009, we repaid all amounts due and terminated the LM Credit Agreement in connection with the issue and sale of SIRIUS’ 9.75% Senior Secured Notes due 2015.

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

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. In June 2009, XM repaid all amounts due and terminated the Second-Lien Credit Agreement in connection with the issue and sale of its 11.25% Senior Secured Notes due 2013.

On March 6, 2009, XM amended and restated the \$100,000 Term Loan, dated as of June 26, 2008 and the \$250,000 Credit Agreement, dated as of May 5, 2006. These facilities were combined as term loans into the Amended and Restated Credit Agreement, dated as of March 6, 2009. Liberty Media, LLC, purchased \$100,000 aggregate principal amount of such loans from the existing lenders. In June 2009, XM used a portion of the net proceeds from the sale of its 11.25% Senior Secured Notes due 2013 to extinguish the Amended and Restated Credit Agreement.

Liberty Media has advised us that as of December 31, 2009 it owned the following principal amounts of our debt:

	<b>December 31,</b>	
	<b>2009</b>	<b>2008</b>
11.25% Senior Secured Notes due 2013	\$ 87,000	\$ —
13% Senior Notes due 2013	76,000	—
7% Exchangeable Senior Subordinated Notes due 2014	11,000	—
9 <sup>5</sup> / <sub>8</sub> % Senior Notes due 2013	55,221	—
9.75% Senior Secured Notes due 2015	50,000	—
Total	\$ 279,221	\$ —

As of December 31, 2009, we recorded \$8,523 related to accrued interest with Liberty Media to Related party current liabilities. We recognized Interest expense related to Liberty Media of \$79,640 for the year ended December 31, 2009.

***SIRIUS Canada***

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 has the right to receive a royalty equal to a percentage of SIRIUS Canada’s gross revenues based on subscriber levels (ranging between 5% to 15%) and the number of Canadian-specific channels made available to SIRIUS Canada. SIRIUS’ investment in SIRIUS Canada is primarily non-voting shares which carry an 8% cumulative dividend.

We recorded the following revenue from SIRIUS Canada in connection with the agreement above. Royalty income is included in Other revenue and dividend income is included in Interest and investment income in our consolidated statements of operations:

	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Royalty income	\$ 5,797	\$ 1,309	\$ 1,159
Dividend income	839	199	422
Total revenue from SIRIUS Canada	\$ 6,636	\$ 1,508	\$ 1,581

Receivables recorded relating to royalty income and dividend income were fully utilized to absorb a portion of our share of the losses generated by SIRIUS Canada during the year ended December 31, 2009. Total costs that have been or will be reimbursed by SIRIUS Canada for the years ended December 31, 2009, 2008 and 2007 were \$11,031, \$14,973 and \$7,712, respectively.

***XM Canada***

In 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. We recognize these payments on a gross basis as a principal obligor pursuant to the provisions of ASC 605, *Revenue Recognition*.

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

The estimated fair value of deferred revenue from XM Canada as of the Merger date was approximately \$34,000, and is being amortized on a straight-line basis over the remaining expected term of the agreements. As of December 31, 2009 and 2008, the carrying value of Deferred revenue related to XM Canada was \$31,568 and \$36,002, respectively.

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, 2009 and 2008, amounts drawn by XM Canada on this facility in lieu of payment of subscription fees recorded in Related party long-term assets were \$18,429 and \$8,311, respectively.

As of December 31, 2009 and 2008, amounts due from XM Canada (in addition to the amounts drawn on the standby credit facility) recorded in Related party long-term assets were \$6,000 and \$3,750, respectively.

We recorded the following revenue from XM Canada as Other revenue in our consolidated statements of operations, in connection with the agreements above:

	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Amortization of XM Canada deferred income	\$ 2,776	\$ 1,156	\$ —
Subscriber and activation fee royalties	11,603	97	—
Licensing fee revenue	6,000	2,500	—
Advertising reimbursements	1,067	366	—
Total revenue from XM Canada	\$ 21,446	\$ 4,119	\$ —

***General Motors and American Honda***

XM has a long-term distribution agreement with General Motors Company (“GM”). GM has a representative on our board of directors and is considered a related party. During the term of the agreement, GM has agreed to distribute the XM service. XM subsidizes a portion of the cost of XM radios and makes incentive payments to GM when the owners of GM vehicles with installed XM radios become subscribers to XM’s service. XM also shares with GM a percentage of the subscriber 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.

XM makes bandwidth available to OnStar Corporation for audio and data transmissions to owners of XM-enabled GM vehicles, regardless of whether the owner is an XM subscriber. 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.

XM has an agreement 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. 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. XM makes incentive payments to American Honda for each purchaser of a Honda or Acura vehicle that becomes a self-paying XM subscriber and shares with American Honda a portion of the subscriber revenue attributable to Honda and Acura vehicles with installed XM radios.

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

We recorded the following total revenue from GM and American Honda, primarily consisting of subscriber revenue, in connection with the agreements above:

	For the Years Ended December 31,		
	2009	2008	2007
GM	\$ 31,037	\$ 16,803	\$ —
American Honda	12,254	7,504	—
Total	\$ 43,291	\$ 24,307	\$ —

We have incurred the following expenses with GM and American Honda:

	For the Years Ended December 31,					
	2009		2008		2007	
	GM	American Honda	GM	American Honda	GM	American Honda
Sales and marketing	\$ 31,595	\$ 500	\$ 16,115	\$ 815	\$ —	\$ —
Revenue share and royalties	58,992	6,541	36,305	2,051	—	—
Subscriber acquisition costs	34,895	5,397	30,975	3,433	—	—
Customer service and billing	268	—	119	—	—	—
Interest expense, net of amounts capitalized	4,644	—	51	—	—	—
Total	\$ 130,394	\$ 12,438	\$ 83,565	\$ 6,299	\$ —	\$ —

**(10) Investments**

Investments consist of the following:

	December 31,	
	2009	2008
Investment in SIRIUS Canada	\$ —	\$ —
Investment in XM Canada	2,390	8,873
Investment in XM Canada debentures	2,970	2,542
Auction rate certificates	8,556	7,985
Restricted investments	3,400	141,250
Total investments	\$ 17,316	\$ 160,650

**Canadian Investments**

Our investments in SIRIUS Canada and XM Canada (“Canadian Investments”) are recorded using the equity method since we have a significant influence, but less than a controlling voting interest in our Canadian Investments. Under this method, our investments in the Canadian Investments, originally recorded at cost, are 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 our Canadian Investments. We have a 49.9% economic interest in SIRIUS Canada and a 23.33% economic interest in XM Canada.

Our share of net earnings or losses of our Canadian Investments is recorded to Gain (loss) on investments in our consolidated statements of operations. As it relates to XM Canada, this is done on a one month lag. We evaluate our Canadian Investments periodically and record an impairment charge to Gain (loss) on investments in our consolidated statements of operations if we determine that decreases in fair value are considered to be other than temporary. In addition, any payments received from the Canadian Investments in excess of the carrying value of our investments in, advances to and commitments to such entity is recorded to Gain (loss) on investments in our consolidated statements of operations.

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

We recorded the following amounts to Gain (loss) on investments:

	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Share of SIRIUS Canada net loss	\$ (6,636)	\$ (4,745)	\$ —
Payments received from SIRIUS Canada in excess of carrying value	13,738	—	—
Release of liability with SIRIUS Canada	1,351	—	—
Share of XM Canada net loss	(2,292)	(9,309)	—
Impairment of XM Canada	(4,734)	(16,453)	—
Other	504	—	—
<b>Total</b>	<b>\$ 1,931</b>	<b>\$ (30,507)</b>	<b>\$ —</b>

In addition, during the year ended December 31, 2009, we recorded \$543 as a foreign exchange gain to Accumulated other comprehensive loss, net of tax, related to our investment in XM Canada.

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 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, 2009, the carrying values of the host contract and embedded derivative related to our investment in the debentures was \$2,961 and \$9, respectively. As of December 31, 2008, the carrying values 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. In January 2010, our investment in the auction rate certificates was called by the issuer at par plus accrued interest, or \$9,456, resulting in a gain of approximately \$900 in the first quarter of 2010.

***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.

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

**(11) Debt**

Our debt consists of the following:

	Conversion Price (per share)	December 31,	
		2009	2008
<b>SIRIUS Debt</b>			
8 <sup>3</sup> / <sub>4</sub> % Convertible Subordinated Notes due 2009 (a)	\$ 28.46	\$ —	\$ 1,744
3 <sup>1</sup> / <sub>4</sub> % Convertible Notes due 2011 (b)	\$ 5.30	230,000	230,000
Less: discount		(1,371)	(1,935)
Senior Secured Term Loan due 2012 (c)	N/A	244,375	246,875
9 <sup>5</sup> / <sub>8</sub> % Senior Notes due 2013 (d)	N/A	500,000	500,000
Less: discount		(3,341)	(3,518)
9.75% Senior Secured Notes due 2015 (e)	N/A	257,000	—
Less: discount		(11,695)	—
2 <sup>1</sup> / <sub>2</sub> % Convertible Notes due 2009 (f)	\$ 4.41	—	189,586
<b>XM and XM Holdings Debt</b>			
10% Convertible Senior Notes due 2009 (g)	\$ 10.87	—	400,000
Less: discount		—	(16,449)
10% Senior Secured Discount Convertible Notes due 2009 (h)	\$ 0.69	—	33,249
Add: premium		—	34,321
10% Senior PIK Secured Notes due 2011 (i)	N/A	113,685	—
Less: discount		(7,325)	—
11.25% Senior Secured Notes due 2013 (j)	N/A	525,750	—
Less: discount		(32,259)	—
13% Senior Notes due 2013 (k)	N/A	778,500	778,500
Less: discount		(76,601)	(90,018)
9.75% Senior Notes due 2014 (l)	N/A	5,260	5,260
7% Exchangeable Senior Subordinated Notes due 2014 (m)	\$ 1.875	550,000	550,000
Less: discount		(9,707)	(10,474)
Senior Secured Term Loan due 2009	N/A	—	100,000
Senior Secured Revolving Credit Facility due 2009	N/A	—	250,000
Add: premium		—	151
<b>Other debt:</b>			
Capital leases	N/A	14,304	23,215
<b>Total debt</b>		<b>3,076,575</b>	<b>3,220,507</b>
Less: current maturities		13,882	399,726
<b>Total long-term</b>		<b>3,062,693</b>	<b>2,820,781</b>
Less: related party		263,566	—
<b>Total long-term, excluding related party</b>		<b>\$ 2,799,127</b>	<b>\$ 2,820,781</b>

**SIRIUS Debt**

**(a) 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<sup>3</sup>/<sub>4</sub>% Notes”). The remaining balance of the 8<sup>3</sup>/<sub>4</sub>% Notes matured on September 29, 2009 and were repaid in cash.

**(b) 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”), which 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.



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

***(c) Senior Secured Term Loan due 2012***

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 “Senior Secured Term Loan”) of \$250,000, which has been fully drawn. Interest under the Senior Secured 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  $\frac{1}{2}$  of 1.00%, plus 1.25%. The current interest rate is 2.56%. The Senior Secured Term Loan amortizes in equal quarterly installments of 0.25% of the initial aggregate principal amount for the first four and a half years, with the balance of the loan thereafter being repaid in four equal quarterly installments. The Senior Secured Term Loan matures on December 20, 2012.

The Senior Secured Term Loan is guaranteed by certain of 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’ four in-orbit satellites, one ground spare satellite and the shares of the Guarantor.

The Senior Secured Term Loan contains customary affirmative covenants and event of default provisions. The negative covenants contained in the Senior Secured Term Loan are substantially similar to those contained in the indenture governing SIRIUS’ 9 $\frac{5}{8}$ % Senior Notes due 2013.

***(d) 9 $\frac{5}{8}$ % Senior Notes due 2013***

In August 2005, SIRIUS issued \$500,000 in aggregate principal amount of 9 $\frac{5}{8}$ % Senior Notes due 2013 (the “9 $\frac{5}{8}$ % Notes”), which mature on August 1, 2013 with interest payable semi-annually on February 1 and August 1 of each year. The obligations under the 9 $\frac{5}{8}$ % Notes are not secured by any of our assets.

***(e) 9.75% Senior Secured Notes due 2015***

In August 2009, SIRIUS issued \$257,000 aggregate principal amount of 9.75% Senior Secured Notes due 2015 (the “9.75% Notes”). Interest is payable semi-annually in arrears on March 1 and September 1 of each year, commencing on March 1, 2010, at a rate of 9.75% per annum. The 9.75% Notes mature on September 1, 2015. The 9.75% Notes were issued for \$244,292, resulting in an aggregate original issuance discount of \$12,708.

The domestic subsidiaries of SIRIUS that guarantee certain of the indebtedness of SIRIUS and its restricted subsidiaries guarantee SIRIUS’ obligations under the 9.75% Notes. The 9.75% Notes and related guarantees are secured by first-priority liens on substantially all of the assets of SIRIUS and the guarantors other than certain excluded assets (including cash, accounts receivable and certain inventory).

***(f) 2 $\frac{1}{2}$ % Convertible Notes due 2009***

In February 2004, SIRIUS issued \$250,000 in aggregate principal amount of 2 $\frac{1}{2}$ % Convertible Notes due 2009 (the “2 $\frac{1}{2}$ % Notes”). The remaining balance of the 2 $\frac{1}{2}$ % Notes matured on February 17, 2009, and were paid in cash.

***XM and XM Holdings Debt***

***(g) 10% Convertible Senior Notes due 2009***

XM Holdings issued \$400,000 aggregate principal amount of 10% Convertible Senior Notes due 2009 (the “10% Convertible Notes”).

In February 2009, we exchanged \$172,485 aggregate principal amount of the outstanding 10% Convertible Notes for a like principal amount of XM Holdings’ 10% Senior PIK Secured Notes due 2011. We accounted for the exchange as a modification of debt and recorded \$2,008 to General and administrative expense in our consolidated statements of operations and \$10,990 of additional debt discount in our consolidated balance sheets.

In July 2009, XM used a portion of the net proceeds received from the issuance of its 11.25% Senior Secured Notes due 2013 and cash on hand to purchase at par \$179,065 aggregate principal amount of the 10% Convertible Notes. We recorded a loss of \$3,031 related to the unamortized discount to Loss on extinguishment of debt and credit facilities in our consolidated statements of operations as a result of this transaction.

Interest was payable semi-annually at a rate of 10% per annum. The remaining balance of \$48,450 of the 10% Convertible Notes matured on December 1, 2009 and were paid in cash.

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

***(h) 10% Senior Secured Discount Convertible Notes due 2009***

XM Holdings and XM, as co-obligors, had outstanding \$33,249 aggregate principal amount of 10% Senior Secured Discount Convertible Notes due 2009 (the “10% Discount Convertible Notes”). Interest was payable semi-annually at a rate of 10% per annum. The 10% Discount Convertible Notes matured on December 31, 2009 and were paid in cash.

***(i) 10% Senior PIK Secured Notes due 2011***

In February 2009, XM Holdings exchanged \$172,485 aggregate principal amount of outstanding 10% Convertible Notes for a like principal amount of its 10% Senior PIK Secured Notes due 2011 (the “PIK Notes”). Interest is payable on the PIK Notes semiannually in arrears on June 1 and December 1 of each year at a rate of 10% per annum paid in cash from December 1, 2008 to December 1, 2009; at a rate of 10% per annum paid in cash and 2% per annum paid in kind from December 1, 2009 to December 1, 2010; and at a rate of 10% per annum paid in cash and 4% per annum paid in kind from December 1, 2010 to the maturity date.

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

We paid a fee equal to, at each exchanging noteholders’ election, either (i) 833 shares of our common stock (the “Structuring Fee Shares”) for every \$1 principal amount of 10% Convertible Notes exchanged or (ii) an amount in cash equal to \$0.05 for every \$1 principal amount of 10% Convertible Notes exchanged. The total number of Structuring Fee Shares delivered was 59,178,819, and the aggregate cash delivered was approximately \$5,100.

In October 2009, we purchased \$58,800 aggregate principal amount of the PIK Notes at a price of \$60,499, which included accrued interest of \$2,287. We recorded a net loss of \$3,669, related to the unamortized discount and the discount on the purchase, to Loss on extinguishment of debt and credit facilities, net, in our consolidated statements of operations as a result of this transaction.

***(j) 11.25% Senior Secured Notes due 2013***

In June 2009, XM issued \$525,750 aggregate principal amount of 11.25% Senior Secured Notes due 2013 (the “11.25% Notes”). Interest is payable semi-annually in arrears on June 15 and December 15 of each year at a rate of 11.25% per annum. The 11.25% Notes mature on June 15, 2013. The 11.25% Notes were issued for \$488,398, resulting in an aggregate original issuance discount of \$37,352.

XM Holdings and the domestic subsidiaries of XM that guarantee certain of the indebtedness of XM and its restricted subsidiaries guarantee XM’s obligations under the 11.25% Notes. The 11.25% Notes and related guarantees are secured by first-priority liens on substantially all of the assets of XM Holdings, XM and the guarantors.

***(k) 13% Senior Notes due 2013***

In July 2008, XM 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, are unsecured and mature on August 1, 2013.

***(l) 9.75% Senior Notes due 2014***

XM has outstanding \$5,260 aggregate principal amount of 9.75% Senior Notes due 2014 (the “XM 9.75% Notes”). Interest on the XM 9.75% Notes is payable semi-annually on May 1 and November 1 at a rate of 9.75% per annum. The XM 9.75% Notes are unsecured and mature on May 1, 2014. XM, at its option, may redeem the XM 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 XM 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.

In March 2009, XM executed and delivered a Third Supplemental Indenture (the “XM 9.75% Notes Supplemental Indenture”). The XM 9.75% Notes Supplemental Indenture amended the indenture to eliminate substantially all of the restrictive covenants, eliminated certain events of default and modified or eliminated certain other provisions contained in the indenture and the XM 9.75% Notes.

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

(Dollar amounts in thousands, unless otherwise stated)

***(m) 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.

***Expired Credit Arrangements***

***LM Term Loan and LM Purchase Money Loan***

In February 2009, SIRIUS entered into a Credit Agreement (the “LM Credit Agreement”) with Liberty Media Corporation, as administrative agent and collateral agent. The LM Credit Agreement provided for a \$250,000 term loan (“LM Term Loan”) and \$30,000 of purchase money loans (“LM Purchase Money Loan”). Concurrently with entering into the LM Credit Agreement, SIRIUS borrowed \$250,000 under the LM Term Loan. The proceeds of the LM 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.

In August 2009, SIRIUS used net proceeds from the sale of its 9.75% Notes to extinguish the LM Term Loan and LM Purchase Money Loan. We recorded an aggregate loss on extinguishment of the LM Term Loan and LM Purchase Money Loan of \$134,520 consisting primarily of the unamortized discount, deferred financing fees and unaccreted portion of the repayment premium to Loss on extinguishment of debt and credit facilities, net, in our consolidated statements of operations.

***Amended and Restated Credit Agreement due 2011***

In March 2009, XM amended and restated the \$100,000 Senior Secured Term Loan due 2009, dated as of June 26, 2008, and the \$250,000 Senior Secured Revolving Credit Facility due 2009, dated as of May 5, 2006. These facilities were combined as term loans into the Amended and Restated Credit Agreement, dated as of March 6, 2009. Liberty Media LLC purchased \$100,000 aggregate principal amount of such loans from the lenders.

In June 2009, XM used net proceeds from the sale of its 11.25% Notes to repay amounts due under and extinguish the Amended and Restated Credit Agreement. XM paid a repayment premium of \$6,500. We recorded an aggregate loss on extinguishment of the Amended and Restated Credit Agreement of \$49,996 consisting primarily of the unamortized discount, deferred financing fees and unaccreted portion of the repayment premium to Loss on extinguishment of debt and credit facilities, net, in our consolidated statements of operations.

***Second-Lien Credit Agreement***

In February 2009, XM entered into a Credit Agreement (the “XM Credit Agreement”) with Liberty Media Corporation, as administrative agent and collateral agent. The XM Credit Agreement provided 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.

In June 2009, XM terminated the Second-Lien Credit Agreement in connection with the sale of the 11.25% Notes and repaid all amounts due thereunder. We recorded a loss on termination of the Second-Lien Credit Agreement of \$57,663 related to deferred financing fees to Loss on extinguishment of debt and credit facilities, net, in our consolidated statements of operations.

***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 to finance the purchase of its fifth and sixth satellites through June 10, 2010. On December 1, 2009, we cancelled the Loral Credit Agreement.

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

***Covenants and Restrictions***

Our debt generally requires 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. SIRIUS operates XM Holdings as an unrestricted subsidiary for purposes of compliance with the covenants contained in its debt instruments. If we fail to comply with these covenants, our debt could become immediately payable.

At December 31, 2009, we were in compliance with all financial covenants.

**(12) Stockholders' Equity**

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

We were authorized to issue up to 9,000,000,000 and 8,000,000,000 shares of common stock as of December 31, 2009 and 2008, respectively. There were 3,882,659,087 and 3,651,765,837 shares of common stock issued and outstanding as of December 31, 2009 and 2008, respectively.

As of December 31, 2009, approximately 3,659,320,000 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, 2009, employees did not exercise any stock options.

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.

During the third quarter of 2009, Morgan Stanley Capital Services Inc. returned to us 60,000,000 shares of our common stock borrowed in July 2008 to facilitate the offering of the Exchangeable Notes. The returned shares were retired upon receipt.

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, the borrowed shares are not considered outstanding for the purpose of computing and reporting our net loss per common share. The accounting method may change if, due to a default by either UBS or MS (or Morgan Stanley, as guarantor), the borrowed shares, or the equivalent value of those shares, will not be returned to us as required under the share lending agreements.

In January 2004, SIRIUS signed a seven-year agreement with a sports programming provider. Upon execution of this agreement, SIRIUS delivered 15,173,070 shares of common stock valued at \$40,967 to that programming provider. These shares of common stock are subject to transfer restrictions which lapse over time. We recognized expense associated with these shares of \$5,852 in each of the years ended December 31, 2009, 2008 and 2007, respectively. As of December 31, 2009, there was a \$7,420 remaining balance of common stock value included in Other current assets and Other long-term assets in the amount of \$5,852 and \$1,568, respectively. As of December 31, 2008, there was a \$13,272 remaining balance of common stock value included in Other current assets and Other long-term assets in the amount of \$5,852 and \$7,420, respectively.

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

We were authorized to issue up to 50,000,000 shares of undesignated preferred stock as of December 31, 2009. There were 24,808,959 shares of Series A Convertible Preferred Stock ("Series A Preferred Stock") issued and outstanding as of December 31, 2009 and 2008. There were 12,500,000 shares of Convertible Perpetual Preferred Stock, Series B (the "Series B Preferred Stock"), issued and outstanding as of December 31, 2009. There were no shares of Preferred Stock, Series C Junior (the "Series C Junior Preferred Stock"), issued and outstanding at December 31, 2009.

The Series A Preferred Stock is redeemable at the option of the holder at any time for an equal number of shares of our common stock.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
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The Series B Preferred Stock is convertible into shares of our common stock at the rate of 206.9581409 shares of common stock for each share of Series B Preferred Stock, representing approximately 40% of our outstanding shares of common stock (after giving effect to such conversion). As holder of the Series B Preferred Stock, Liberty Radio LLC is entitled to a number of votes equal to the number of shares of our common stock into which each such Series B Preferred Stock share is convertible. Liberty Radio LLC will also receive dividends and distributions ratably with our common stock, on an as-converted basis. With respect to dividend rights, the Series B Preferred Stock ranks evenly with our common stock, the Series A Preferred Stock, and each other class or series of our equity securities not expressly provided as ranking senior to the Series B Preferred Stock. With respect to liquidation rights, the Series B Preferred Stock ranks evenly with each other class or series of our equity securities not expressly provided as ranking senior to the Series B Preferred Stock, and will rank senior to our common stock and the Series A Preferred Stock.

In 2009, we accounted for the issuance of Series B Preferred Stock by recording a \$227,716 increase to additional paid-in capital for the amount of allocated proceeds received and an additional \$186,188 increase to paid-in capital for the beneficial conversion feature, which was recognized as a charge to retained earnings.

In 2009, our board of directors created and reserved for issuance in accordance with the Rights Plan (as described below) 9,000 shares of the Series C Junior Preferred Stock. The shares of Series C Junior Preferred Stock are not redeemable and rank, with respect to the payment of dividends and the distribution of assets, junior to all other series of our preferred stock, unless the terms of such series shall so provide.

***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, 2009, approximately 47,271,000 warrants to acquire approximately 61,678,000 shares of common stock with an average exercise price of \$3.04 per share were outstanding. Warrants vest over time or upon the achievement of milestones and expire at various times through 2015. We recognized aggregate warrant related expense of \$2,522, \$1,865 and \$10,707 for the years ended December 31, 2009, 2008 and 2007, respectively.

	Average Exercise Price	Expiration Date	Number of Warrants Outstanding	
			December 31, 2009	2008
NFL	\$ 2.50	March 2008 – March 2015	16,718	16,718
Penske Companies	2.39	July 2009	—	2,921
DaimlerChrysler AG	1.04	May 2012	16,500	16,500
RadioShack	5.00	December 2010	4,000	6,000
Ford	3.00	October 2012	4,000	4,000
Warrants associated with XM Holdings Debt	0.66	December 2009	—	44
Warrants associated with XM Holdings Debt	8.76	March 2010	325	325
Space Systems/Loral	7.05	December 2011	1,840	1,840
Other distributors and programming providers	3.00	June 2014	1,788	1,788
Other	15.00	December 2010 – April 2011	2,100	4,531
<b>Total</b>	<b>\$ 3.04</b>		<b>47,271</b>	<b>54,667</b>

***Rights Plan***

In April 2009, our board of directors adopted a rights plan. The terms of the rights and the rights plan are set forth in a Rights Agreement dated as of April 29, 2009 (the “Rights Plan”). 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.

The Rights Plan will continue in effect until August 1, 2011, unless it is terminated or redeemed earlier by our board of directors. We plan to submit the Rights Plan to a stockholder vote prior to June 30, 2010, and the failure to obtain this approval will result in a termination of the Rights Plan.

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

(Dollar amounts in thousands, unless otherwise stated)

**(13) Benefits Plans**

We maintain four share-based benefits plans. We satisfy awards and options granted under these plans through the issuance of new shares. We recognized share-based payment expense of \$73,981, \$87,405 and \$78,900 for the years ended December 31, 2009, 2008 and 2007, respectively. For a summarized schedule of share-based payment expense, see the appended footnote to our consolidated statements of operations. We did not realize any income tax benefits from share-based benefits plans during the years ended December 31, 2009, 2008 and 2007, as a result of a full valuation allowance that is maintained for substantially all net deferred tax assets.

**2009 Long-Term Stock Incentive Plan**

In May 2009, our stockholders approved the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan (the “2009 Plan”). Employees, consultants and members of our board of directors are eligible to receive awards under the 2009 Plan. The 2009 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 2009 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, 2009, approximately 274,425,000 shares of common stock were available for future grant under the 2009 Plan.

**Other Plans**

SIRIUS and XM Holdings maintain four other share-based benefit plans — the XM Holdings 2007 Stock Incentive Plan, the Amended and Restated Sirius Satellite Radio 2003 Long-Term Stock Incentive Plan, the XM Holdings 1998 Shares Award Plan and the XM Holdings Talent Option Plan. These plans generally provide for the grant of stock options, restricted stock, restricted stock units and other stock based awards. No further awards may be made under these plans. Outstanding awards under these plans will be continued.

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 years ended December 31, 2009, 2008 and 2007:

	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Risk-free interest rate	2.5%	2.3%	4.8%
Expected life of options — years	4.68	4.89	4.45
Expected stock price volatility	88%	80%	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 years ended December 31, 2009, 2008 and 2007:

	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Risk-free interest rate	0.67 – 2.69%	0.37 – 3.34%	3.1 – 5.0%
Expected life — years	2.33 – 6.19	1.25 – 4.08	2.25 – 6.33
Expected stock price volatility	83 – 130%	80%	60%
Expected dividend yield	\$—	\$—	\$—

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

The following table summarizes stock option activity under our share-based payment plans for the years ended December 31, 2009, 2008 and 2007 (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, 2007	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		
Granted	265,761	\$ 0.53		
Exercised	—	\$ —		
Forfeited, cancelled or expired	<u>(66,405)</u>	\$ 5.21		
Outstanding, December 31, 2009	<u>364,792</u>	\$ 1.44	6.89	\$ 29,051
Exercisable, December 31, 2009	<u>77,718</u>	\$ 4.22	4.43	\$ 685

The weighted average grant date fair value of options granted during the years ended December 31, 2009, 2008 and 2007 was \$0.36, \$1.27 and \$1.88, respectively. The total intrinsic value of stock options exercised during the years ended December 31, 2009, 2008 and 2007 was \$0, \$127 and \$5,286, respectively.

We recognized share-based payment expense associated with stock options of \$46,080, \$49,148 and \$41,431 for the years ended December 31, 2009, 2008 and 2007, respectively.

The following table summarizes the nonvested restricted stock and restricted stock unit activity under our share-based payment plans for the years ended December 31, 2009, 2008 and 2007 (shares in thousands):

	<u>Shares</u>	<u>Weighted-Average Grant Date Fair Value</u>
Nonvested, January 1, 2007	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	19,931	\$ 2.84
Granted	84,851	\$ 0.37
Vested	(95,512)	\$ 0.68
Forfeited	<u>(2,351)</u>	\$ 1.92
Nonvested, December 31, 2009	<u>6,919</u>	\$ 2.65

The weighted average grant date fair value of restricted stock units granted during the years ended December 31, 2009, 2008 and 2007 was \$0.37, \$2.87 and \$3.58, respectively. The total intrinsic value of restricted stock units that vested during the years ended December 31, 2009, 2008 and 2007 was \$45,827, \$21,451 and \$8,668, respectively.

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

We recognized share-based payment expense associated with restricted stock units and shares of restricted stock of \$16,632, \$21,813 and \$14,482 for the years ended December 31, 2009, 2008 and 2007, respectively.

Total unrecognized compensation costs related to unvested share-based payment awards granted to employees and members of our board of directors at December 31, 2009 and 2008, net of estimated forfeitures, was \$114,068 and \$90,310, 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, 2009.

**401(k) Savings Plan**

We sponsor the Sirius Satellite Radio 401(k) Savings Plan (the “Sirius Plan”) for eligible employees. During 2009, we merged the XM Satellite Radio 401(k) Savings Plan (the “XM Plan”) into the Sirius Plan. All eligible employees under the XM Plan became subject to the contribution, matching and vesting rules of the Sirius Plan.

The Sirius Plan allows eligible employees to voluntarily contribute from 1% to 50% of their pre-tax salary subject to certain defined limits. We match 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 33 1/3% for each year of employment and are fully vested after three years of employment. Expense resulting from the matching contribution to the plans was \$2,895, \$2,735 and \$1,551 for the years ended December 31, 2009, 2008 and 2007, respectively.

We may also elect to contribute to the profit sharing portion of the Sirius Plan based upon the total eligible compensation of eligible participants. These additional contributions, referred to as profit-sharing contributions, are determined by the compensation committee of our board of directors. 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 \$0, \$6,610 and \$4,877 for the years ended December 31, 2009, 2008 and 2007, respectively.

**(14) Income Taxes**

Our income tax expense consisted of the following:

	<b>For the Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b>Current taxes:</b>			
Federal	\$ —	\$ —	\$ —
State	—	—	478
Foreign	1,622	—	—
<b>Total current taxes</b>	<b>1,622</b>	<b>—</b>	<b>478</b>
<b>Deferred taxes:</b>			
Federal	3,962	2,674	1,949
State	397	(198)	8
<b>Total deferred taxes</b>	<b>4,359</b>	<b>2,476</b>	<b>1,957</b>
<b>Total income tax expense</b>	<b>\$ 5,981</b>	<b>\$ 2,476</b>	<b>\$ 2,435</b>



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

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>2009</b>	<b>2008</b>	<b>2007</b>
Federal tax benefit, at statutory rate	\$ (117,883)	\$ (1,858,784)	\$ (196,986)
State income tax benefit, net of federal benefit	(11,788)	(185,879)	(22,385)
Change in state tax rates	—	17,307	25,355
Change in taxes resulting from permanent differences, net	1,849	1,930,650	(2,707)
Other	(4,945)	(477)	261
Change in valuation allowance	138,748	99,659	198,897
<b>Income tax expense</b>	<b>\$ 5,981</b>	<b>\$ 2,476</b>	<b>\$ 2,435</b>

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

	<b>December 31,</b>	
	<b>2009</b>	<b>2008</b>
<b>Deferred tax assets:</b>		
Net operating loss carryforwards	\$ 3,086,067	\$ 2,608,038
GM payments and liabilities	311,235	506,106
Deferred revenue	226,763	240,849
Severance accrual	1,821	17,237
Accrued bonus	16,130	24,537
Expensed costs capitalized for tax	59,999	75,998
Loan financing costs	17,288	27,890
Investments	61,643	63,786
Stock based compensation	155,754	138,840
Other	49,538	100,205
Total deferred tax assets	3,986,238	3,803,486
<b>Deferred tax liabilities:</b>		
Depreciation of property and equipment	(126,240)	(158,012)
FCC license	(771,407)	(766,935)
Other intangible assets	(251,360)	(265,138)
Other	(89,441)	—
Net deferred tax liabilities	(1,238,448)	(1,190,085)
<b>Net deferred tax assets before valuation allowance</b>	<b>2,747,790</b>	<b>2,613,401</b>
Valuation allowance	(3,615,332)	(3,476,583)
<b>Net deferred tax liability</b>	<b>\$ (867,542)</b>	<b>\$ (863,182)</b>

The difference in the net deferred tax liability of \$867,542 and \$863,182 at December 31, 2009 and 2008, respectively, is primarily the result of the amortization of the FCC license which is 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 GAAP since it relates to indefinite-lived assets and are not anticipated to reverse in the same period.

At December 31, 2009, we had net operating loss (“NOL”) carryforwards of approximately \$8,016,000 for federal and state income tax purposes available to offset future taxable income. These NOL carryforwards expire on various dates beginning in 2014. We have had several ownership changes under Section 382 of the Internal Revenue Code, which may 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.

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.

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

**(15) Commitments and Contingencies**

The following table summarizes our expected contractual cash commitments as of December 31, 2009:

	2010	2011	2012	2013	2014	Thereafter	Total
Long-term debt obligations	\$ 513,882	\$ 349,080	\$ 239,402	\$1,304,250	\$ 555,260	\$ 257,000	\$3,218,874
Cash interest payments	263,358	249,642	234,037	194,849	63,814	25,058	1,030,758
Satellite and transmission	182,443	58,460	2,359	2,370	10,856	11,327	267,815
Programming and content	253,471	143,187	123,925	32,478	14,350	—	567,411
Marketing and distribution	68,565	25,048	18,559	6,950	4,500	—	123,622
Satellite incentive payments	7,384	8,851	10,505	11,099	10,807	63,535	112,181
Operating lease obligations	38,465	23,614	19,430	15,612	9,877	5,751	112,749
Other	31,496	6,503	1,515	—	—	—	39,514
<b>Total</b>	<b>\$ 1,359,064</b>	<b>\$ 864,385</b>	<b>\$ 649,732</b>	<b>\$ 1,567,608</b>	<b>\$ 669,464</b>	<b>\$ 362,671</b>	<b>\$ 5,472,924</b>

*Long-term debt obligations.* Long-term debt obligations include principal payments on outstanding debt.

*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 an agreement with Space Systems/Loral to design and construct a sixth satellite. In January 2008, SIRIUS entered into an agreement with International Launch Services (“ILS”) to secure a satellite launch on a Proton rocket. We expect to launch this sixth SIRIUS satellite in the fourth quarter of 2011.

Space Systems/Loral has constructed a fifth satellite, XM-5, for use in the XM system. In October 2009, we entered into an agreement with ILS to secure a satellite launch for XM-5 on a Proton rocket. We expect to launch XM-5 in the third quarter of 2010.

*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.

*Satellite incentive payments.* 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, 2009, we have accrued \$28,723 related to contingent in-orbit performance payments for XM-3 and XM-4 based on expected 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.

*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 recognized in connection with leases for the years ended December 31, 2009, 2008 and 2007 was \$44,374, \$40,378 and \$16,941, respectively.

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

*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 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, 2009 and 2008, \$3,400 and \$141,250, respectively, were classified as Restricted investments as a result of obligations under these letters of credit and escrow deposits.

We do not have any other significant off-balance sheet arrangements that are reasonably likely to have a material effect on our financial condition, results of operations, liquidity, capital expenditures or capital resources.

***Legal Proceedings***

*FCC Merger Order.* On July 25, 2008, the FCC adopted an order approving the Merger. In September 2008, Mt. Wilson FM Broadcasters, Inc. filed a Petition for Reconsideration of the FCC's merger order. This Petition for Reconsideration remains pending.

*Advanced Recording Functionality Disputes/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.* Commencing in May 2006, holders of copyrights in sound recordings and holders of copyrights in musical works brought, or threatened to bring, actions against SIRIUS and XM in connection with the advanced recording functionality included in the XM Inno, the XM NeXus, the XM Helix, the XM SkyFi3, the SIRIUS S50 and the SIRIUS Stiletto line of radios. The plaintiffs brought this action in the United States District Court for the Southern District of New York, seeking monetary damages and equitable relief.

XM has settled these claims with the major record companies and a significant number of music publishers. XM is in discussions to settle these claims with certain independent record companies and other music publishers.

Prior to introducing retail sales of devices with advanced recording functionality, SIRIUS entered into agreements with the major recording companies concerning such devices. SIRIUS is in discussions to settle the remaining claims with certain independent record companies and music publishers.

SIRIUS and XM believe that the distribution and use of their products do not violate applicable copyright laws. There can be no assurance regarding the ultimate outcome of these matters and settlement discussions, 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 subscribers, both on behalf of themselves and on a class action basis; former employees; parties to contracts or leases; and owners of patents, trademarks, copyrights or other intellectual property. None of these actions are, in our opinion, likely to have a material adverse effect on our cash flows, financial position or results of operations.

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

**(16) 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>
<b>2009:</b>				
Total revenue	\$ 586,979	\$ 590,829	\$ 618,656	\$ 676,173
Cost of services	(268,947)	(254,432)	(266,888)	(273,742)
Income from operations	41,061	37,235	66,355	83,673
Net (loss) income	(50,411)	(157,358)	(149,190)	14,167
Net loss per common share—basic and diluted (2)	\$ (0.07)	\$ (0.04)	\$ (0.04)	\$ —
<b>2008: (1)</b>				
Total revenue	\$ 270,350	\$ 283,017	\$ 488,443	\$ 622,182
Cost of services	(146,344)	(141,933)	(272,360)	(302,910)
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)

- (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.

**(17) 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 Holdings 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 our 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 GAAP. 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**  
(Dollar amounts in thousands, unless otherwise stated)

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING BALANCE SHEETS**  
**AS OF DECEMBER 31, 2009**

<i>(in thousands)</i>	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
<b>Current assets:</b>						
Cash and cash equivalents	\$ 171,265	\$ —	\$ —	\$ 212,224	\$ —	\$ 383,489
Accounts receivable, net	102,276	—	—	60,042	—	162,318
Due from subsidiaries/affiliates	127,110	(9)	—	930	(128,031)	—
Inventory, net	12,177	—	—	4,016	—	16,193
Prepaid expenses	25,042	—	—	75,231	—	100,273
Related party current assets	2,768	—	—	103,479	—	106,247
Deferred tax asset	7,999	—	—	64,641	—	72,640
Other current assets	12,896	—	—	5,724	—	18,620
<b>Total current assets</b>	<b>461,533</b>	<b>(9)</b>	<b>—</b>	<b>526,287</b>	<b>(128,031)</b>	<b>859,780</b>
Property and equipment, net	894,485	17,113	—	799,405	—	1,711,003
Investment in subsidiaries/affiliates	(673,110)	—	—	—	673,110	—
FCC licenses	—	—	83,654	2,000,000	—	2,083,654
Restricted investments	3,150	—	—	250	—	3,400
Deferred financing fees, net	3,595	—	—	5,307	—	8,902
Intangible assets, net	—	—	—	611,461	—	611,461
Goodwill	—	—	—	—	1,834,856	1,834,856
Due from subsidiaries/affiliates	—	—	—	—	—	—
Related party long-term assets	155	—	—	110,439	—	110,594
Other long-term assets	14,350	—	—	25,528	—	39,878
<b>Total assets</b>	<b>\$ 704,158</b>	<b>\$ 17,104</b>	<b>\$ 83,654</b>	<b>\$ 4,078,677</b>	<b>\$ 2,379,935</b>	<b>\$ 7,263,528</b>
<b>Current liabilities:</b>						
Accounts payable and accrued expenses	\$ 343,131	\$ —	\$ —	\$ 207,803	\$ (7,248)	\$ 543,686
Accrued interest	27,627	—	—	46,939	—	74,566
Due to subsidiaries/affiliates	—	17,521	477	110,032	(128,030)	—
Current portion of deferred revenue	569,742	—	—	509,215	7,248	1,086,205
Current portion of deferred credit on executory contracts	—	—	—	252,831	—	252,831
Current maturities of long-term debt	2,500	—	—	11,382	—	13,882
Related party current liabilities	3,934	—	—	101,537	—	105,471
<b>Total current liabilities</b>	<b>946,934</b>	<b>17,521</b>	<b>477</b>	<b>1,239,739</b>	<b>(128,030)</b>	<b>2,076,641</b>
Deferred revenue	121,286	—	—	162,656	—	283,942
Deferred credit on executory contracts	—	—	—	784,078	—	784,078
Long-term debt	1,109,893	—	—	1,502,349	186,885	2,799,127
Long-term related party debt	102,577	—	—	157,183	3,806	263,566
Deferred tax liability	7,999	—	16,908	915,275	—	940,182
Related party long-term liabilities	—	—	—	17,508	—	17,508
Other long-term liabilities	22,201	—	—	38,851	—	61,052
<b>Total liabilities</b>	<b>2,310,890</b>	<b>17,521</b>	<b>17,385</b>	<b>4,817,639</b>	<b>62,661</b>	<b>7,226,096</b>
<b>Commitments and contingencies</b>						
<b>Stockholders' equity (deficit):</b>						
Preferred and common stock	3,920	—	—	—	—	3,920
Accumulated other comprehensive loss	(6,581)	—	—	(6,581)	6,581	(6,581)
Additional paid-in-capital	10,281,331	—	83,654	5,989,700	(6,073,354)	10,281,331
Retained earnings (accumulated deficit)	(11,885,402)	(417)	(17,385)	(6,722,081)	8,384,047	(10,241,238)
<b>Total stockholders' equity (deficit)</b>	<b>(1,606,732)</b>	<b>(417)</b>	<b>66,269</b>	<b>(738,962)</b>	<b>2,317,274</b>	<b>37,432</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 704,158</b>	<b>\$ 17,104</b>	<b>\$ 83,654</b>	<b>\$ 4,078,677</b>	<b>\$ 2,379,935</b>	<b>\$ 7,263,528</b>

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

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

<i>(in thousands)</i>	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
<b>Current assets:</b>						
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	—	—	108,613	—	110,427
Deferred tax asset	4,992	—	—	38,051	(11,773)	31,270
Other current assets	12,521	—	—	14,953	—	27,474
<b>Total current assets</b>	<b>402,325</b>	<b>—</b>	<b>—</b>	<b>465,734</b>	<b>(78,803)</b>	<b>789,256</b>
Property and equipment, net	816,562	12,326	—	874,588	—	1,703,476
Investment in subsidiaries/affiliates	(525,687)	—	—	—	525,687	—
FCC licenses	—	—	83,654	2,000,000	—	2,083,654
Restricted investments	21,000	—	—	120,250	—	141,250
Deferred financing fees, net	4,400	—	—	4,797	—	9,197
Intangible assets, net	—	—	—	688,671	—	688,671
Goodwill	—	—	—	—	1,834,856	1,834,856
Related party long-term assets	—	—	—	128,357	—	128,357
Other long-term assets	46,735	—	—	34,284	—	81,019
<b>Total assets</b>	<b>\$ 765,335</b>	<b>\$ 12,326</b>	<b>\$ 83,654</b>	<b>\$ 4,316,681</b>	<b>\$ 2,281,740</b>	<b>\$ 7,459,736</b>
<b>Current liabilities:</b>						
Accounts payable and accrued expenses	\$ 387,747	\$ —	\$ —	\$ 245,598	\$ (8,081)	\$ 625,264
Accrued interest	25,920	—	—	50,543	—	76,463
Due to subsidiaries/affiliates	—	12,481	477	15,497	(28,455)	—
Current portion of deferred revenue	574,948	—	—	419,707	8,081	1,002,736
Current portion of deferred credit on executory contracts	—	—	—	234,774	—	234,774
Current maturities of long-term debt	4,244	—	—	355,739	39,743	399,726
Related party current liabilities	23,018	—	—	83,930	(38,575)	68,373
<b>Total current liabilities</b>	<b>1,015,877</b>	<b>12,481</b>	<b>477</b>	<b>1,405,788</b>	<b>(27,287)</b>	<b>2,407,336</b>
Deferred revenue	116,634	—	—	131,255	—	247,889
Deferred credit on executory contracts	—	—	—	1,037,190	—	1,037,190
Long-term debt	1,158,508	—	—	1,413,596	248,677	2,820,781
Deferred tax liability	4,990	—	14,761	886,475	(11,773)	894,453
Related party long-term liabilities	—	—	—	—	—	—
Other long-term liabilities	7,225	—	—	36,325	—	43,550
	2,303,234	12,481	15,238	4,910,629	209,617	7,451,199
<b>Total liabilities</b>						
Commitments and contingencies						
<b>Stockholders' equity (deficit):</b>						
Common and preferred stock	3,677	—	—	—	—	3,677
Accumulated other comprehensive loss	(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 (accumulated deficit)	(11,258,696)	(155)	(15,238)	(6,456,579)	8,018,408	(9,712,260)
<b>Total stockholders' equity (deficit)</b>	<b>(1,537,899)</b>	<b>(155)</b>	<b>68,416</b>	<b>(593,948)</b>	<b>2,072,123</b>	<b>8,537</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 765,335</b>	<b>\$ 12,326</b>	<b>\$ 83,654</b>	<b>\$ 4,316,681</b>	<b>\$ 2,281,740</b>	<b>\$ 7,459,736</b>

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

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS**  
**FOR THE YEAR ENDED DECEMBER 31, 2009**

<i>(in thousands)</i>	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Revenue	\$ 1,174,759	\$ —	\$ —	\$ 1,297,879	\$ —	\$ 2,472,638
Cost of services	573,898	8	—	490,102	—	1,064,008
Sales and marketing	82,266	—	—	146,690	—	228,956
Subscriber acquisition costs	215,787	—	—	124,719	—	340,506
General and administrative	114,058	—	—	113,496	—	227,554
Engineering, design and development	19,360	—	—	21,671	—	41,031
Depreciation and amortization	117,416	254	—	191,780	—	309,450
Restructuring, impairments and related costs	553	—	—	32,254	—	32,807
<b>Total operating expenses</b>	<b>1,123,338</b>	<b>262</b>	<b>—</b>	<b>1,120,712</b>	<b>—</b>	<b>2,244,312</b>
Income (loss) from operations	51,421	(262)	—	177,167	—	228,326
Other income (expense):						
Interest and investment income	1,008	—	—	2,637	—	3,645
Interest expense, net of amounts capitalized	(80,315)	—	—	(289,845)	63,740	(306,420)
Gain (loss) on change in value of embedded derivative	—	—	—	(33,534)	33,534	—
Loss on extinguishment of debt and credit facilities, net	(152,216)	—	—	(115,885)	455	(267,646)
Gain (loss) on investments	(258,954)	—	—	(7,026)	267,911	1,931
Other income (expense)	(91)	—	—	3,446	—	3,355
Income (loss) before income taxes	(439,147)	(262)	—	(263,040)	365,640	(336,809)
Income tax expense	(1,371)	—	(2,147)	(2,463)	—	(5,981)
Net income (loss)	(440,518)	(262)	(2,147)	(265,503)	365,640	(342,790)
Preferred stock beneficial conversion feature	(186,188)	—	—	—	—	(186,188)
Net income (loss) attributable to common stockholders	<u>\$ (626,706)</u>	<u>\$ (262)</u>	<u>\$ (2,147)</u>	<u>\$ (265,503)</u>	<u>\$ 365,640</u>	<u>\$ (528,978)</u>

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

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

<i>(in thousands)</i>	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
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
Impairment of goodwill	—	—	—	6,601,046	(1,834,856)	4,766,190
Depreciation and amortization	109,370	72	—	94,310	—	203,752
Restructuring, impairments and related costs	10,434	—	—	—	—	10,434
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>
Income (loss) from operations	(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, net of amounts capitalized	(71,605)	—	—	(107,155)	33,927	(144,833)
Gain (loss) on change in value of embedded derivative	—	—	—	322,347	(322,347)	—
Loss on extinguishment of debt and credit facilities, net	(98,203)	—	—	—	—	(98,203)
Gain (loss) on investments	(6,451,286)	—	—	(25,762)	6,446,541	(30,507)
Other income (expense)	(4,472)	—	—	(5,127)	—	(9,599)
Income (loss) before income taxes	(6,860,200)	(72)	—	(6,443,517)	7,992,977	(5,310,812)
Income tax expense	477	—	(1,990)	(963)	—	(2,476)
Net income (loss)	<u>\$ (6,859,723)</u>	<u>\$ (72)</u>	<u>\$ (1,990)</u>	<u>\$ (6,444,480)</u>	<u>\$ 7,992,977</u>	<u>\$ (5,313,288)</u>



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

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

<i>(in thousands)</i>	<b>Sirius XM Radio Inc.</b>	<b>Sirius Asset Mgmt LLC</b>	<b>Satellite CD Radio</b>	<b>Non - Guarantors</b>	<b>Eliminations</b>	<b>Consolidated Sirius XM Radio Inc.</b>
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
Impairment of goodwill	—	—	—	—	—	—
Depreciation and amortization	106,697	83	—	—	—	106,780
Restructuring, impairments and related costs	—	—	—	—	—	—
Total operating expenses	<u>1,427,445</u>	<u>83</u>	<u>—</u>	<u>7,628</u>	<u>—</u>	<u>1,435,156</u>
Income (loss) from operations	(505,378)	(83)	—	(7,629)	—	(513,090)
Other income (expense):						
Interest and investment income	20,570	—	—	—	—	20,570
Interest expense, net of amounts capitalized	(70,328)	—	—	—	—	(70,328)
Loss on extinguishment of debt and credit facilities, net	—	—	—	—	—	—
Gain (loss) on 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)
Income tax expense	—	—	(2,435)	—	—	(2,435)
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**  
(Dollar amounts in thousands, unless otherwise stated)

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENT OF**  
**STOCKHOLDERS' EQUITY (DEFICIT) AND COMPREHENSIVE LOSS**  
**FOR THE YEARS ENDED DECEMBER 31, 2009, 2008 AND 2007**

<i>(in thousands)</i>	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non-Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Balance, January 1, 2007	\$ (389,072)	\$ —	\$ 72,841	\$ (4,471)	\$ (68,369)	\$ (389,071)
Net income (loss)	(565,252)	(83)	(2,435)	(7,629)	10,147	(565,252)
Other comprehensive income (loss)	—	—	—	—	—	—
Total comprehensive loss	(565,252)	(83)	(2,435)	(7,629)	10,147	(565,252)
Issuance of common stock to employees and employee benefit plans	19,246	—	—	—	—	19,246
Issuance of common stock to 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, including accrued interest	3,182	—	—	—	—	3,182
Exchange of 2½% Convertible Notes due 2009, including accrued interest	2	—	—	—	—	2
Balance, December 31, 2007	(792,738)	(83)	70,406	(12,100)	(58,222)	(792,737)
Net income (loss)	(6,859,723)	(72)	(1,990)	(6,444,480)	7,992,977	(5,313,288)
Unrealized gain on available-for-sale securities, net of tax	(1,040)	—	—	(1,040)	1,040	(1,040)
Foreign currency translation adjustment, net of tax	(6,831)	—	—	(6,831)	6,831	(6,831)
Total comprehensive loss	(6,867,594)	(72)	(1,990)	(6,452,351)	8,000,848	(5,321,159)
Common stock issued to XM Satellite Radio Holdings stockholders	5,460,853	—	—	5,870,503	(5,870,503)	5,460,853
Restricted common stock issued to XM Satellite Radio Holdings stockholders	66,628	—	—	—	—	66,628
Issuance of common stock to employees and employee benefit plans, net of forfeitures	10,846	—	—	—	—	10,846
Issuance of common stock issued under share borrow agreements	262	—	—	—	—	262
Series A convertible preferred stock issued to XM Satellite Radio Holdings stockholders	47,095	—	—	—	—	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	208	—	—	—	—	208
Exchange of 3½% Convertible Notes due 2008, including accrued interest	33,502	—	—	—	—	33,502
Exchange of 2½% Convertible Notes due 2009, including accrued interest	209,113	—	—	—	—	209,113
Restricted shares withheld for taxes upon vesting	(84)	—	—	—	—	(84)
Balance at December 31, 2008	\$ (1,537,899)	\$ (155)	\$ 68,416	\$ (593,948)	\$ 2,072,123	\$ 8,537

Net income (loss)	(440,518)	(262)	(2,147)	(265,503)	365,640	(342,790)
Other comprehensive loss:						
Unrealized gain on available-for-sale securities, net of tax	473	—	—	473	(473)	473
Foreign currency translation adjustment, net of tax	817	—	—	817	(817)	817
Total comprehensive loss	(439,228)	(262)	(2,147)	(264,213)	364,350	(341,500)
Issuance of preferred stock — related party, net of issuance costs	224,004	—	—	—	—	224,004
Issuance of common stock to employees and employee benefit plans, net of forfeitures	2,630	—	—	—	—	2,630
Structuring fee on 10% Senior PIK Secured Notes due 2011	5,918	—	—	—	—	5,918
Share-based payment expense	71,388	—	—	—	—	71,388
Issuance of restricted stock units in satisfaction of accrued compensation	31,291					31,291
Exchange of 2½% Convertible Notes due 2009, including accrued interest	35,164					35,164
Contributed capital	—	—	—	119,199	(119,199)	—
Balance at December 31, 2009	<u>\$ (1,606,732)</u>	<u>\$ (417)</u>	<u>\$ 66,269</u>	<u>\$ (738,962)</u>	<u>\$ 2,317,274</u>	<u>\$ 37,432</u>

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

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS**  
**FOR THE YEAR ENDED DECEMBER 31, 2009**

<i>(in thousands)</i>	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non-Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Net cash provided by (used in) operating activities	\$ 162,127	\$ 5,041	\$ —	\$ 272,843	\$ (6,181)	\$ 433,830
Cash flows from investing activities:						
Additions to property and equipment	(190,005)	(5,041)	—	(53,465)	—	(248,511)
Purchases of restricted and other investments	—	—	—	—	—	—
Merger related costs	—	—	—	—	—	—
Sale of restricted and other investments	—	—	—	—	—	—
Net cash used in investing activities	(190,005)	(5,041)	—	(53,465)	—	(248,511)
Cash flows from financing activities:						
Preferred stock issuance costs, net	(3,712)	—	—	—	—	(3,712)
Long-term borrowings, net of costs	188,032	—	—	388,399	6,181	582,612
Related party long-term borrowings, net of costs	268,775	—	—	93,818	—	362,593
Short-term financings	—	—	—	—	—	—
Payment of premiums on redemption of debt	—	—	—	(17,075)	—	(17,075)
Repayment of related party long-term borrowings, net of costs	(251,247)	—	—	(100,000)	—	(351,247)
Repayment of long-term borrowings	(176,352)	—	—	(579,095)	—	(755,447)
Net cash provided by (used in) financing activities	25,496	—	—	(213,953)	6,181	(182,276)
Net (decrease) increase in cash and cash equivalents	(2,382)	—	—	5,425	—	3,043
Cash and cash equivalents at beginning of period	173,647	—	—	206,799	—	380,446
Cash and cash equivalents at end of period	<u>\$ 171,265</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 212,224</u>	<u>\$ —</u>	<u>\$ 383,489</u>

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

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

<i>(in thousands)</i>	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non-Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Net cash (used in) provided by operating activities	\$ (159,081)	\$ 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	40,469	—	—	25,400	—	65,869
Net cash (used in) provided by investing activities	(95,468)	(7,581)	—	11,953	819,521	728,425
Cash flows from financing activities:						
Proceeds from exercise of warrants and stock options	471	—	—	—	—	471
Long-term borrowings, net of costs	—	—	—	531,743	—	531,743
Payment of premiums on redemption of debt	—	—	—	(18,693)	—	(18,693)
Payments to noncontrolling interest	—	—	—	(61,880)	—	(61,880)
Repayment of long-term borrowings	(2,500)	—	—	(1,083,143)	—	(1,085,643)
Net cash used in financing activities	(2,029)	—	—	(631,973)	—	(634,002)
Net (decrease) increase in cash and cash equivalents	(256,578)	—	—	(621,317)	819,521	(58,374)
Cash and cash equivalents at beginning of period	430,225	—	—	828,116	(819,521)	438,820
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**  
(Dollar amounts in thousands, unless otherwise stated)

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

<i>(in thousands)</i>	<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	40,191	—	—	—	—	40,191
Net cash used in investing activities	(53,710)	(476)	—	—	—	(54,186)
Cash flows from financing activities:						
Proceeds from exercise of warrants and stock options	4,097	—	—	—	—	4,097
Long-term borrowings, net of costs	244,879	—	—	—	—	244,879
Repayment of long-term borrowings	(625)	—	—	—	—	(625)
Net cash provided by financing activities	248,351	—	—	—	—	248,351
Net increase in cash and cash equivalents	38,141	—	—	7,258	—	45,399
Cash and cash equivalents at beginning of period	392,084	—	—	1,337	—	393,421
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

## Schedule II—Schedule of Valuation and Qualifying Accounts

<i>(in thousands)</i> <b>Description</b>	<b>Balance January 1,</b>	<b>Charged to Expenses</b>	<b>Write-offs/ Payments/ Other</b>	<b>Balance December 31,</b>
<b>2007</b>				
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
<b>2008</b>				
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(1)	\$ 3,476,583
<b>2009</b>				
Allowance for doubtful accounts	\$ 10,860	30,602	(32,795)	\$ 8,667
Deferred tax assets—valuation allowance	\$ 3,476,583	138,749	—	\$ 3,615,332

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

**EXHIBIT INDEX**

<b>Exhibit</b>	<b>Description</b>
2.1	Agreement and Plan of Merger, dated as of February 19, 2007, among the Company, Vernon Merger Corporation and XM Satellite Radio Holdings Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K dated February 21, 2007).
3.1	Amended and Restated Certificate of Incorporation of the Company, dated March 4, 2003 (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2002).
3.2	Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company, dated July 28, 2008 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated August 1, 2008).
3.3	Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company, dated December 18, 2008 (incorporated by reference to Exhibit 3.3 to the Company's Registration Statement on Form S-3 dated December 30, 2008).
3.4	Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company, dated May 29, 2009 (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-8 dated July 1, 2009).
3.5	Amended and Restated By-Laws of the Company (incorporated by reference to Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001).
3.6	Certificate of Amendment of the Amended and Restated By-Laws of the Company, dated July 28, 2008 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K dated August 1, 2008).
3.7	Certificate of Designations of Series A Convertible Preferred Stock of the Company, dated July 28, 2008 (incorporated by reference to Exhibit 3.3 to the Company's Current Report on Form 8-K dated August 1, 2008).
3.8	Certificate of Designations of Series B-1 Convertible Perpetual Preferred Stock of the Company, dated March 5, 2009 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated March 6, 2009).
3.9	Certificate of Ownership and Merger, dated August 5, 2008 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K dated August 5, 2008).
4.1	Form of certificate for shares of the Company's Common Stock (incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-1 (File No. 33-74782)).
4.2	Warrant Agreement, dated March 15, 2000, between XM Satellite Radio Holdings Inc., as Issuer, and United States Trust Company of New York, as Warrant Agent (incorporated by reference to Amendment No. 1 to Exhibit 4.5 to XM Satellite Radio Holdings Inc.'s Registration Statement on Form S-1, File No. 333-39176).
4.3	Warrant Registration Rights Agreement, dated March 15, 2000, among XM Satellite Radio Holdings Inc., Bear, Stearns & Co., Inc., Donaldson, Lufkin and Jenrette Securities Corporation, Salomon Smith Barney Inc. and Lehman Brothers Inc. (incorporated by reference to Exhibit 4.6 to Amendment No. 1 to XM Satellite Radio Holdings Inc.'s Registration Statement on Form S-1, File No. 333-39176).
4.4	Form of Warrant (incorporated by reference to Exhibit 4.7 to Amendment No. 1 to XM Satellite Radio Holdings Inc.'s Registration Statement on Form S-1, File No. 333-39176).
4.5	Amended and Restated Warrant Agreement, dated as of December 27, 2000, between the Company and United States Trust Company of New York, as warrant agent and escrow agent (incorporated by reference to Exhibit 4.27 to the Company's Registration Statement on Form S-3 (File No. 333-65602)).
4.6	Common Stock Purchase Warrant granted by the Company to Ford Motor Company dated October 7, 2002 (incorporated by reference to Exhibit 4.16 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002).
4.7	Indenture, dated as of May 23, 2003, between the Company and The Bank of New York, as trustee (incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K dated May 30, 2003).
4.8	Third Supplemental Indenture, dated as of October 13, 2004, between the Company and The Bank of New York, as trustee, relating to the Company's 3 1/4% Convertible Notes due 2011 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K dated October 13, 2004).



<b>Exhibit</b>	<b>Description</b>
4.9	Indenture, dated as of May 1, 2006, among XM Satellite Radio Holdings Inc., XM Satellite Radio Inc. and The Bank of New York, as trustee, relating to the 9.75% Senior Notes due 2014 (incorporated by reference to Exhibit 4.1 to XM Satellite Radio Holdings Inc.'s Current Report on Form 8-K filed on May 5, 2006).
4.10	Form of 9.75% Senior Note due 2014 (incorporated by reference to Exhibit 4.3 to XM Satellite Radio Holdings Inc.'s Current Report on Form 8-K filed on May 5, 2006).
4.11	Indenture, dated as of August 9, 2005, between the Company and The Bank of New York, as trustee, relating to the Company's 9 5/8% Senior Notes due 2013 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on August 12, 2005).
4.12	Common Stock Purchase Warrant granted by the Company to DaimlerChrysler AG dated October 1, 2007 (incorporated by reference to Exhibit 4.13 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2007).
4.13	First Supplemental Warrant Agreement, dated July 28, 2008, among the Company, XM Satellite Radio Holdings Inc. and The Bank of New York Mellon relating to the Warrants, dated March 15, 2000, with the United States Trust Company of New York (incorporated by reference to Exhibit 4.67 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
4.14	Written instrument, dated July 28, 2008, among the Company, XM Satellite Radio Holdings Inc. and Vernon Merger Corporation relating to the Warrant Agreement with Space Systems / Loral, dated June 3, 2005 (incorporated by reference to Exhibit 4.69 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
4.15	First Supplemental Indenture, dated July 28, 2008, among XM Satellite Radio Inc., as issuer, XM Satellite Radio Holdings Inc., XM Equipment Leasing LLC, XM Radio Inc. and The Bank of New York Mellon, relating to the 9.75% Senior Notes due 2014 (incorporated by reference to Exhibit 4.72 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
4.16	Second Supplemental Indenture, dated July 28, 2008, among XM Satellite Radio Inc., as issuer, XM Satellite Radio Holdings Inc., XM Equipment Leasing LLC, XM Radio Inc. and The Bank of New York Mellon, relating to the 9.75% Senior Notes due 2014 (incorporated by reference to Exhibit 4.73 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
4.17	Indenture, dated as of July 31, 2008, among XM Escrow LLC and The Bank of New York Mellon, relating to the 13% Senior Notes due 2013 (incorporated by reference to Exhibit 4.77 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
4.18	Supplemental Indenture, dated as of July 31, 2008, among XM Satellite Radio Holdings Inc., XM Satellite Radio Inc., XM Equipment Leasing LLC, XM Radio Inc., and The Bank of New York Mellon, relating to the 13% Senior Notes due 2013 (incorporated by reference to Exhibit 4.78 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
4.19	Supplemental Indenture, dated as of July 31, 2008, among XM Satellite Radio Holdings Inc., XM Escrow LLC and The Bank of New York Mellon, relating to the 13% Senior Notes due 2013 (incorporated by reference to Exhibit 4.79 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
4.20	Indenture, dated as of August 1, 2008 among XM Satellite Radio Inc., XM Satellite Radio Holdings Inc., XM Equipment LLC, XM Radio Inc., the Company and The Bank of New York Mellon, as trustee, relating to the 7% Exchangeable Senior Subordinated Notes due 2014 (incorporated by reference to Exhibit 4.80 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
4.21	Registration Rights Agreement, dated August 1, 2008, among XM Satellite Radio Inc., XM Satellite Radio Holdings Inc., XM Equipment Leasing LLC, XM Radio Inc., the Company, J.P. Morgan Securities Inc., Morgan Stanley & Co. Incorporated and UBS Securities LLC, relating to the 7% Exchangeable Senior Subordinated Notes due 2014 (incorporated by reference to Exhibit 4.81 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
4.22	Form of Media-Based Incentive Warrant, dated as of January 27, 2009, issued by the Company to NFL Enterprises LLC (incorporated by reference to Exhibit 4.48 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008).

<b>Exhibit</b>	<b>Description</b>
4.23	Note Purchase Agreement, dated as of February 13, 2009, among the Company, XM Satellite Radio Holdings Inc., XM 1500 Eckington LLC, XM Investment LLC and the purchasers listed on schedule I thereto, relating to XM Satellite Radio Holdings Inc.'s 10% Senior PIK Secured Notes due 2011 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on February 17, 2009).
4.24	Indenture, dated as of February 13, 2009, among the Company, XM Satellite Radio Holdings Inc., XM 1500 Eckington LLC, XM Investment LLC and U.S. Bank National Association, as trustee and collateral trustee, relating to XM Satellite Radio Holdings Inc.'s 10% Senior PIK Secured Notes due 2011 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on February 17, 2009).
4.25	Form of 10% Senior PIK Secured Notes due 2011 (incorporated by reference to Exhibit A of Exhibit 4.2 to the Company's Current Report on Form 8-K filed on February 17, 2009).
4.26	Security Agreement, dated as of February 13, 2009, among XM 1500 Eckington LLC, XM Investment LLC and U.S. Bank National Association, as collateral trustee, relating to XM Satellite Radio Holdings Inc.'s 10% Senior PIK Secured Notes due 2011 (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed on February 17, 2009).
4.27	Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of February 13, 2009, from XM 1500 Eckington LLC, as grantor, to Stewart Title of Maryland Inc., as trustee for the benefit of U.S. Bank National Association as collateral agent, as beneficiary (incorporated by reference to Exhibit 4.4 to the Company's Current Report on Form 8-K filed on February 17, 2009).
4.28	Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of February 13, 2009, from XM Investment LLC, as grantor, to Stewart Title of Maryland Inc., as trustee for the benefit of U.S. Bank National Association as collateral agent, as beneficiary (incorporated by reference to Exhibit 4.5 to the Company's Current Report on Form 8-K filed on February 17, 2009).
4.29	Registration Rights Agreement, dated as of February 13, 2009, between the Company, XM Satellite Radio Holdings Inc., XM 1500 Eckington LLC, XM Investment LLC and the purchasers signatory thereto, relating to XM Satellite Radio Holdings Inc.'s 10% Senior PIK Secured Notes due 2011 (incorporated by reference to Exhibit 4.6 to the Company's Current Report on Form 8-K filed on February 17, 2009).
4.30	Investment Agreement, dated as of February 17, 2009, among the Company and Liberty Radio LLC (incorporated by reference to Exhibit 4.55 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008).
4.31	Third Supplemental Indenture, dated as of March 6, 2009, among XM Satellite Radio Inc., XM Equipment Leasing LLC, XM Radio Inc. and The Bank of New York Mellon, as trustee, relating to the 9.75% Senior Notes due 2014 (incorporated by reference to Exhibit 4.56 to the Company's Annual Report on Form 10-K for the year ended December 31, 2008).
4.32	Rights Agreement, dated as of April 29, 2009, between the Company and The Bank of New York Mellon, as Rights Agent, which includes the Form of Certificate of Designation as Exhibit A, Form of Right Certificate as Exhibit B and the Summary of Rights as Exhibit C (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on April 29, 2009).
4.33	Indenture, dated June 30, 2009, between XM Satellite Radio Inc. and U.S. Bank National Association relating to the 11.25% Senior Secured Notes due 2013 (incorporated by reference to Exhibit 4.59 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009).
4.34	Indenture, dated as of August 24, 2009, between the Company and U.S. Bank National Association relating to the 9.75% Senior Secured Notes due 2015 (incorporated by reference to Exhibit 4.61 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2009).
4.35	Collateral Agreement, dated as of August 24, 2009, between the Company, certain of its subsidiaries and U.S. Bank National Association, as Collateral Agent relating to the 9.75% Senior Secured Notes due 2015 (incorporated by reference to Exhibit 4.62 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2009).

<b>Exhibit</b>	<b>Description</b>
4.36	Collateral Agreement, dated as of December 31, 2009, by and among XM Satellite Radio Holdings Inc., XM Satellite Radio Inc., certain subsidiaries thereof, and U.S. Bank National Association, as collateral agent, relating to the 11.25% Senior Secured Notes due 2013 (incorporated by reference to Exhibit 10.1 to XM Satellite Radio Holdings Inc.'s Current Report on Form 8-K filed on January 6, 2010).
10.1	Lease Agreement, dated as of March 31, 1998, between Rock-McGraw, Inc. and the Company (incorporated by reference to Exhibit 10.1.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1998).
**10.2	Operational Assistance Agreement, dated as of June 7, 1999, between XM Satellite Radio Inc. and Clear Channel Communications, Inc. (incorporated by reference to Exhibit 10.10 to Amendment No. 1 to XM Satellite Radio Holdings Inc.'s Registration Statement on Form S-1, File No. 333-83619).
**10.3	Technology Licensing Agreement among XM Satellite Radio Inc., XM Satellite Radio Holdings Inc., WorldSpace Management Corporation and American Mobile Satellite Corporation, dated as of January 1, 1998, amended by Amendment No. 1 to Technology Licensing Agreement, dated June 7, 1999 (incorporated by reference to Exhibit 10.3 to XM Satellite Radio Holdings Inc.'s Annual Report on Form 10-K for the year ended December 31, 2007).
***10.4	Third Amended and Restated Distribution and Credit Agreement, dated as of February 6, 2008, among General Motors Corporation, XM Satellite Radio Holdings Inc. and XM Satellite Radio Inc. (incorporated by reference to Exhibit 10.63 to XM Satellite Radio Holdings Inc.'s Annual Report on Form 10-K for the year ended December 31, 2007).
10.5	Supplemental Indenture, dated as of March 22, 2000, between Rock-McGraw, Inc. and the Company (incorporated by reference to Exhibit 10.1.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2000).
**10.6	Third Amended and Restated Satellite Purchase Contract for In-Orbit Delivery, dated as of May 15, 2001, between XM Satellite Radio Inc. and Boeing Satellite Systems International Inc. (incorporated by reference to Exhibit 10.36 to Amendment No. 1 to XM Satellite Radio Holdings Inc.'s Registration Statement on Form S-3, File No. 333-89132).
10.7	Assignment and Novation Agreement, dated as of December 5, 2001, between XM Satellite Radio Holdings Inc., XM Satellite Radio Inc. and Boeing Satellite Systems International Inc. (incorporated by reference to Exhibit 10.3 to XM Satellite Radio Holdings Inc.'s Current Report on Form 8-K filed on December 6, 2001).
**10.8	Amendment to the Satellite Purchase Contract for In-Orbit Delivery, dated as of December 5, 2001, between XM Satellite Radio Inc. and Boeing Satellite Systems International Inc. (incorporated by reference to Exhibit 10.4 to XM Satellite Radio Holdings Inc.'s Current Report on Form 8-K filed on December 6, 2001).
10.9	Amended and Restated Assignment and Use Agreement, dated as of January 28, 2003, between XM Satellite Radio Inc. and XM Radio Inc. (incorporated by reference to Exhibit 10.7 to XM Satellite Radio Holdings Inc.'s Current Report on Form 8-K filed on January 29, 2003).
**10.10	Amended and Restated Amendment to the Satellite Purchase Contract for In-Orbit Delivery, dated May 23, 2003, among XM Satellite Radio Inc. and XM Satellite Radio Holdings Inc. and Boeing Satellite Systems International, Inc. (incorporated by reference to Exhibit 10.53 to XM Satellite Radio Holdings Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2003).
**10.11	Amendment to the Satellite Purchase Contract for In-Orbit Delivery, dated July 31, 2003, among XM Satellite Radio Inc. and XM Satellite Radio Holdings Inc. and Boeing Satellite Systems International, Inc. (incorporated by reference to Exhibit 10.54 to XM Satellite Radio Holdings Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2003).
10.12	Amendment No. 1 to Amended and Restated Director Designation Agreement, dated as of September 9, 2003, among XM Satellite Radio Holdings Inc. and the shareholders and noteholders named therein (incorporated by reference to Exhibit 10.56 to XM Satellite Radio Holdings Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2003).
10.13	December 2003 Amendment to the Satellite Purchase Contract for In-Orbit Delivery, dated December 19, 2003, among XM Satellite Radio Inc., XM Satellite Radio Holdings Inc. and Boeing Satellite Systems International, Inc. (incorporated by reference to Exhibit 10.57 to XM Satellite Radio Holdings Inc.'s Annual Report on Form 10-K for the year ended December 31, 2003).

<b>Exhibit</b>	<b>Description</b>
10.14	Term Credit Agreement, dated as of June 20, 2007, among the Company, the lenders party thereto, and Morgan Stanley Senior Funding, Inc., as Administrative Agent and Collateral Agent (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated June 20, 2007).
10.15	Waiver and Letter Agreement, dated as of July 14, 2008, among XM Satellite Radio Inc., XM Satellite Radio Holdings Inc. and certain beneficial owners of the 9.75% Senior Notes due 2014 (incorporated by reference to Exhibit 10.6 to XM Satellite Radio Inc.'s Current Report on Form 8-K filed on July 17, 2008).
10.16	Share Lending Agreement, dated July 28, 2008, among the Company and Morgan Stanley Capital Services, Inc. (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
10.17	Share Lending Agreement, dated July 28, 2008, among the Company and UBS AG, London Branch (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
10.18	Underwriting Agreement, dated July 28, 2008, among the Company, Morgan Stanley & Co. Incorporated and UBS Securities LLC, relating to the Share Lending Agreements (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2008).
*10.19	Form of Option Agreement between the Company and each Optionee (incorporated by reference to Exhibit 10.16.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1998).
*10.20	Form of Director Non-Qualified Stock Option Agreement (incorporated by reference to Exhibit 10.25 to Amendment No. 5 to XM Satellite Radio Holdings Inc.'s Registration Statement on Form S-1, File No. 333-83619).
*10.21	CD Radio Inc. 401(k) Savings Plan (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-8 (File No. 333-65473)).
*10.22	Employment Agreement, dated as of June 3, 2003, between the Company and David J. Frear (incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2003).
*10.23	Amended and Restated Sirius Satellite Radio 2003 Long-Term Stock Incentive Plan (incorporated by reference to Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004).
*10.24	Employment Agreement dated November 18, 2004 between the Company and Mel Karmazin (incorporated by reference to Exhibit 10.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 2004).
*10.25	Restricted Stock Unit Agreement, dated as of August 9, 2005, between the Company and James E. Meyer (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K dated August 12, 2005).
*10.26	First Amendment, dated as of August 10, 2005, to the Employment Agreement, dated as of June 3, 2003, between the Company and David Frear (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K dated August 12, 2005).
*10.27	Form of Non-Qualified Stock Option Agreement (incorporated by reference to Exhibit 10.2 to XM Satellite Radio Holdings Inc.'s Current Report on Form 8-K filed June 1, 2007).
*10.28	Form of Restricted Stock Agreement (incorporated by reference to Exhibit 10.3 to XM Satellite Radio Holdings Inc.'s Current Report on Form 8-K filed June 1, 2007).
*10.29	XM Satellite Radio Holdings Inc. 2007 Stock Incentive Plan (incorporated by reference to Exhibit 10.5 to XM Satellite Radio Holdings Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007).
*10.30	Sirius XM Radio 401(k) Savings Plan, as amended and restated effective January 1, 2009 (filed herewith).
*10.31	Second Amendment, dated as of February 12, 2008, to the Employment Agreement, dated as of June 3, 2003, between the Company and David J. Frear (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated February 13, 2008).
*10.32	Employment Agreement, dated as of September 26, 2008, between the Company and Dara F. Altman (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated October 1, 2008).

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<b>Exhibit</b>	<b>Description</b>
*10.33	Agreement to Forfeit Non-Qualified Stock Options, dated as of May 13, 2009, between Mel Karmazin and the Company (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed May 13, 2009).
*10.34	Letter Agreement dated June 30, 2009 amending the Employment Agreement dated November 18, 2004 between Mel Karmazin and the Company (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed July 1, 2009).
*10.35	Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan (incorporated by reference to Exhibit 4.9 to the Company's Registration Statement on Form S-8 dated July 1, 2009).
*10.36	Employment Agreement, dated as of July 28, 2009, between the Company and Scott A. Greenstein (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed July 29, 2009).
*10.37	Employment Agreement, dated as of October 14, 2009, between the Company and James E. Meyer (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed October 16, 2009).
*10.38	Separation Agreement and Release of Claims, dated as of November 12, 2009, between the Company, XM Satellite Radio Holdings Inc., XM Satellite Radio Inc, and Gary Parsons (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed November 12, 2009).
*10.39	Employment Agreement, dated as of January 14, 2010, between the Company and Patrick L. Donnelly (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed January 15, 2010).
21.1	List of Subsidiaries (filed herewith).
23.1	Consent of Ernst & Young LLP (filed herewith).
23.2	Consent of KPMG LLP (filed herewith).
31.1	Certificate of Mel Karmazin, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
31.2	Certificate of David J. Frear, Executive Vice President and Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
32.1	Certificate of Mel Karmazin, Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
32.2	Certificate of David J. Frear, Executive Vice President and Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).

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\* This document has been identified as a management contract or compensatory plan or arrangement.

\*\* Pursuant to the Commission's Orders Granting Confidential Treatment under Rule 406 of the Securities Act of 1933 or Rule 24(b)-2 under the Securities Exchange Act of 1934, certain confidential portions of this Exhibit were omitted by means of redacting a portion of the text.

\*\*\* Confidential treatment has been requested with respect to portions of this Exhibit that have been omitted by redacting a portion of the text.

**SIRIUS XM RADIO 401(k) SAVINGS PLAN**  
**(January 1, 2009 Restatement)**

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## PREAMBLE

The Sirius XM Radio 401(k) Savings Plan, originally effective as of September 1, 1998 and heretofore known as the Sirius Satellite Radio 401(k) Savings Plan, is hereby amended and restated in its entirety. This amendment and restatement shall be effective as of January 1, 2009. The Plan, as amended and restated hereby, is intended to qualify as a profit-sharing plan under Code Section 401(a), and includes a cash or deferred arrangement that is intended to qualify under Code Section 401(k). The Plan is maintained for the exclusive benefit of eligible Employees and their Beneficiaries.

Notwithstanding any other provision of the Plan to the contrary, a Participant's vested interest in his Account under the Plan on and after the effective date of this amendment and restatement shall be not less than his vested interest in his account on the day immediately preceding the effective date. Any provision of the Plan that restricted or limited withdrawals, loans, or other distributions, or otherwise required separate accounting with respect to any portion of a Participant's Account immediately prior to the later of the effective date of this amendment and restatement or the date this amendment and restatement is adopted and the elimination of which would adversely affect the qualification of the Plan under Code Section 401(a) shall continue in effect with respect to such portion of the Participant's Account as if fully set forth in this amendment and restatement.

Effective as of March 1, 2009 (the "Merger Date"), the XM Satellite Radio Inc. 401(k) Retirement Plan (the "Merged Plan") is merged into the Plan. All assets and liabilities of the Merged Plan are transferred to and made a part of the Plan. Each Covered Employee who was eligible to participate in the Merged Plan immediately prior to the Merger Date shall continue to be eligible to participate in the Plan on and after the Merger Date. In no event shall a Participant's vested interest in his Sub-Account attributable to amounts transferred to the Plan from the Merged Plan (his "transferee Sub-Account") on and after the Merger Date be less than his vested interest in his account under the Merged Plan immediately prior to the Merger Date. Notwithstanding any other provision of the Plan to the contrary, a Participant's service credited for eligibility and vesting purposes under the Merged Plan as of the Merger Date, if any, shall be included as Eligibility and Vesting Service under the Plan to the extent Eligibility and Vesting Service are credited under the Plan; provided, however, that inclusion of such service shall not duplicate the Eligibility and Vesting Service otherwise credited under the Plan for periods prior to the Merger Date.

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

**1.1 Plan Definitions**

As used herein, the following words and phrases have the meanings hereinafter set forth, unless a different meaning is required by the context:

An “**Account**” means the account maintained by the Trustee in the name of a Participant that reflects his interest in the Trust and any Sub-Accounts maintained thereunder, as provided in Article VIII.

An “**Additional Discretionary Matching Contribution**” means any Matching Contribution made to the Plan at an Employer’s discretion in addition to the Employer’s Regular Matching Contribution as provided in Article VI, other than a True Up Matching Contribution.

The “**Administrator**” means the Sponsor unless the Sponsor designates another person or persons to act as such.

An “**After-Tax Contribution**” means any after-tax employee contribution made by a Participant to the Plan as may be permitted under Article V or as may have been permitted under the terms of the Plan prior to this amendment and restatement or any after-tax employee contribution made by a Participant to another plan that is transferred directly to the Plan.

The “**Beneficiary**” of a Participant means the person or persons entitled under the provisions of the Plan to receive distribution hereunder in the event the Participant dies before receiving distribution of his entire interest under the Plan.

A Participant’s “**Benefit Payment Date**” means the first day on which all events have occurred which entitle the Participant to receive payment of his benefit.

A “**Catch-Up 401(k) Contribution**” means any 401(k) Contribution made on behalf of a Participant that is in excess of an applicable Plan limit and is made pursuant to, and is intended to comply with, Code Section 414(v).

A “**Class A Employee**” (Salaried or Sales Commission Employee) means any Employee who is paid on a regular salary basis, exclusive commission basis, or regular salary plus commission basis, including exempt or non-exempt Employees who receive a fixed rate on a payroll cycle basis (currently 1/24th of their stated annual salary; semi-monthly), or are eligible to receive commissions on a regular basis. Non-exempt Employees in this class may be eligible for overtime compensation on an exception basis at a calculated hourly rate (subject to applicable State and/or Federal law).

A “**Class B Employee**” (Per Shift, Per Show, Per Appearance, Per Hour) means any Employee who is compensated exclusively on a “per hour,” “per shift,” “per appearance,” and/or “per show” basis, and for which payment is not made without an approved timesheet, and is processed on the next administratively feasible payroll.

The “**Code**” means the Internal Revenue Code of 1986, as amended from time to time. Reference to a Code section includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The “**Compensation**” of a Participant for any period means his wages, salaries, fees for professional service, and all other amounts received for personal services actually rendered in the course of employment with an Employer paid to him for such period for services as a Covered Employee, but excluding (i) contributions (other than elective contributions described in Code Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Participant’s Employer to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p)), whether or not qualified, to the extent that, before application of the limitations of Code Section 415 to such plan, the contributions are not includible in the gross income of the Participant for the taxable year in which contributed, (ii) any distributions from a plan of deferred compensation, whether or not qualified, (iii) amounts realized from the exercise of a non-qualified option or when restricted stock, a restricted stock event or other property held by the Participant either becomes freely transferable or is no longer subject to substantial risk of forfeiture, (iv) amounts received from the sale, exchange or other disposition of stock acquired under a qualified stock option, (v) any other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code Section 125), and (vi) reimbursements and other expense allowances, fringe benefits, moving expenses, deferred compensation, and welfare benefits.

Compensation includes (i) any elective deferral, as defined in Code Section 402(g)(3), (ii) any amount contributed or deferred by the Employer at the Participant’s election which is not includable in the Participant’s gross income by reason of Code Section 125, 132(f)(4), or 457, and (iii) certain contributions described in Code Section 414(h)(2) that are picked up by the employing unit and treated as employer contributions. Such amounts shall be included in Compensation only to the extent that they would otherwise have been included in Compensation as defined above.

If a Participant’s employment terminates, Compensation does not include amounts received by the Participant following such termination except amounts paid within 2 1/2 months after severance from employment if such amounts (1) would otherwise have been paid to the Participant in the course of his employment and are regular compensation for services during the Participant’s regular working hours, compensation for services outside the Participant’s regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation or (2) are payments for accrued sick, vacation or other leave, but only if the Participant would have been able to use such leave if his employment had continued.

In no event, however, shall the Compensation of a Participant taken into account under the Plan for any Plan Year exceed the limit in effect under Code Section 401(a)(17), subject to adjustment annually as provided in Code Sections 401(a)(17)(B) and 415(d); provided that the dollar increase in effect on January 1 of any calendar year, if any, is effective for Plan Years beginning in such calendar year. If the Compensation of a Participant is determined over a period of time that contains fewer than 12 calendar months, then the annual compensation limitation described above shall be adjusted with respect to that Participant by multiplying the annual compensation limitation in effect for the Plan Year by a fraction the numerator of which is the number of full months in the period and the denominator of which is 12; provided that no proration is required for a Participant who is covered under the Plan for less than one full Plan Year if the formula for allocations is based on Compensation for a period of at least 12 months.

A “**Contribution Period**” means the period specified in Article VI for which Employer Contributions shall be made.

A “**Covered Employee**” means any Employee of an Employer. Notwithstanding the foregoing, the term “Covered Employee” shall not include the following:

- any individual with respect to whom an Employer does not withhold income or employment taxes and file Form W-2 (or any replacement Form) with the Internal Revenue Service because such individual has executed a contract, letter of agreement, or other document acknowledging his status as an independent contractor who is not entitled to benefits under the Plan or is otherwise not classified by his Employer as a common law employee, even if such individual is later adjudicated to be a common law employee of his Employer, unless and until the Employer extends coverage to such individual;
- any Leased Employee;
- any nonresident alien who does not receive United States source income;
- any Self-Employed Individual;
- any individual who is a Class B Employee; and
- prior to March 1, 2009, any individual who was previously employed by XM Satellite Radio Inc.



The term "Covered Employee" shall include any Employee who is covered by a collective bargaining agreement with the Employer only if and to the extent such collective bargaining agreement expressly and unequivocally provides for coverage under the Plan.

"**Disabled**" means a Participant can no longer continue in the service of an Employer because of a mental or physical condition that is likely to result in death or is expected to continue for a period of at least 6 months. A Participant shall be considered Disabled only if the Administrator determines he is Disabled based on a written certificate of a physician reasonably acceptable to it.

A Participant's "**Domestic Partner**" means the person with whom a Participant maintains a domestic partnership, as determined by the Administrator. The Administrator shall determine that a Participant maintains a domestic partnership with a person if all of the following requirements are met:

- the Participant and the Participant's partner (i) maintain an intimate, committed relationship of mutual caring, (ii) share the same principal residence, (iii) agree to be responsible for each other's basic living expenses during the period of the relationship, and (iv) are not so closely related by blood that a legal marriage between them would otherwise be prohibited solely by reason of such blood relationship;
- neither the Participant nor the Participant's partner is married to a third party;
- the Participant has filed a written notice with the Administrator, which the Participant has not subsequently withdrawn or revoked, identifying the person as his or her Domestic Partner;
- the Participant and the Participant's partner have complied with all requirements, if any, imposed by the political subdivision in which they are resident, for recognition of domestic partner status (such as declaration or registration requirements, duration of relationship requirements, cohabitation requirements, requirements relating to conduct of financial or contractual obligations, etc.); and
- the Participant's partner does not deny his or her status as the Participant's Domestic Partner or claim to be the domestic partner of, spouse of, or subject to a civil union with any third person.

Any written statement provided by the Participant to the Administrator identifying an individual as his Domestic Partner, other than any such declaration that has subsequently been withdrawn, shall create a rebuttable presumption consistent with such declaration. The Administrator may rely on such presumption unless and until a claimant presents contrary evidence to the Administrator that the Administrator determines is clear and sufficient to rebut such presumption. The Administrator shall have no responsibility to inquire into the accuracy, veracity, or authenticity of any such declaration or to ascertain whether the Participant and the Participant's partner have complied with all the requirements of the political subdivision in which they reside, it being the burden of any contrary claimant to disprove such compliance.

For those purposes specifically identified in the Plan, a Participant's Domestic Partner shall be treated the same as a Participant's Spouse.

An "**Eligible Employee**" means any Covered Employee who has met the eligibility requirements of Article III to participate in the Plan.

The "**Eligibility Service**" of an Employee means the period or periods of service credited to him under the provisions of Article II for purposes of determining his eligibility to participate in the Plan as may be required under Article III.

An "**Employee**" means any common law employee of an Employer or a Related Company, any Self-Employed Individual, and any Leased Employee.

An "**Employer**" means the Sponsor and any entity which has adopted the Plan as may be provided under Article XX.

An "**Employer Contribution**" means the amount, if any, that an Employer contributes to the Plan on behalf of its Eligible Employees in accordance with the provisions of Article VI or Article XXII and that an Eligible Employee may not elect instead to receive in cash.

An "**Enrollment Date**" means the first day of the month coinciding with or immediately following the date the Covered Employee first satisfies the requirements of Section 3.1.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time. Reference to a section of ERISA includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

A "**401(k) Contribution**" means any amount contributed to the Plan on behalf of a Participant that the Participant could elect to receive in cash, but that the Participant elects to have contributed to the Plan in accordance with the provisions of Article IV.

The "**General Fund**" means a Trust Fund maintained by the Trustee as required to hold and administer any assets of the Trust that are not allocated among any separate Investment Funds as may be provided in the Plan or the Trust Agreement. No General Fund shall be maintained if all assets of the Trust are allocated among separate Investment Funds.

A “**Highly Compensated Employee**” means any Covered Employee who is a “highly compensated active employee” as defined hereunder.

A “highly compensated active employee” includes any Covered Employee who performs services for an Employer or any Related Company during the Plan Year and who (i) was a five percent owner at any time during the Plan Year or the “look back year” or (ii) received “compensation” from the Employers and Related Companies during the “look back year” in excess of the dollar amount in effect under Code Section 414(q)(1)(B)(i) adjusted pursuant to Code Section 415(d) (e.g., \$80,000 for “look back years” beginning in 1997, adjusted using as the base period the calendar quarter ending September 30, 1996) and was in the top paid group of Employees for the “look back year”. A Covered Employee is in the top paid group of Employees if he is in the top 20 percent of the Employees of his Employer and all Related Companies when ranked on the basis of compensation paid during the “look back year”.

The determination of who is a Highly Compensated Employee hereunder, including determinations as to the number and identity of Employees in the top paid group, shall be made in accordance with the provisions of Code Section 414(q) and regulations issued thereunder.

For purposes of this definition, the following terms have the following meanings:

- An Employee’s “compensation” means his “415 compensation” as defined in Section 7.1.
- The “look back year” means the 12-month period immediately preceding the Plan Year.

An “**Hour of Service**” with respect to an Employee means each hour, if any, that may be credited to him in accordance with the provisions of Article II.

An “**Investment Fund**” means any separate investment Trust Fund maintained by the Trustee as may be provided in the Plan or the Trust Agreement or any separate investment fund maintained by the Trustee, to the extent that there are Participant Sub-Accounts under such funds, to which assets of the Trust may be allocated and separately invested.

A “**Leased Employee**” means any person (other than an “excludable leased employee”) who performs services for an Employer or a Related Company (the “recipient”) (other than an employee of the “recipient”) pursuant to an agreement between the “recipient” and any other person (the “leasing organization”) on a substantially full-time basis for a period of at least one year, provided that such services are performed under primary direction of or control by the “recipient”. An “excludable leased employee” means any Leased Employee of the “recipient” who is (a) covered by a money purchase pension plan maintained by

the “leasing organization” which provides for (i) a nonintegrated employer contribution on behalf of each participant in the plan equal to at least ten percent of 415 compensation (as defined in Section 7.1), (ii) full and immediate vesting, and (iii) immediate participation by employees of the “leasing organization” or (b) performs substantially all of his services for the “leasing organization” or (c) whose compensation from the “leasing organization” in each Plan Year during the four-year period ending with the Plan Year is less than \$1,000. Notwithstanding the foregoing, a person shall not be treated as an “excludable leased employee” if Leased Employees (including any individual who would otherwise be considered an “excludable leased employee”) constitute more than 20 percent of the “recipient’s” nonhighly compensated work force. For purposes of this definition, contributions or benefits provided to a Leased Employee by the “leasing organization” that are attributable to services performed for the “recipient” shall be treated as provided by the “recipient”.

Notwithstanding the foregoing, if any person who performed services for a “recipient” pursuant to an agreement between the “recipient” and the “leasing organization” becomes a Covered Employee, all service performed by such person for the “recipient” shall be treated as employment with an Employer as an Employee, even if performed on less than a full-time basis, for less than a full year, or while an “excludable leased employee.”

A “**Matching Contribution**” means any Employer Contribution made to the Plan on account of a Participant’s 401(k) Contributions as provided in Article VI. Matching Contributions include the following:

- Regular Matching Contributions.
- True Up Matching Contributions.
- Additional Discretionary Matching Contributions.

A “**Nonelective Contribution**” means any Employer Contribution made to the Plan as provided in Article VI that is not contingent upon a Participant’s “elective contributions” or “employee contributions” as those terms are defined in Section 7.1. Nonelective Contributions do not include Matching Contributions.

The “**Normal Retirement Date**” of an Employee means the date he attains age 65.

A “**Participant**” means any person who has satisfied the requirements of Article III to become an Eligible Employee and who has an Account in the Trust.

The “**Plan**” means the Sirius XM Radio 401(k) Savings Plan, as from time to time in effect.

A “**Plan Year**” means the 12-consecutive-month period ending each December 31.

A “**Predecessor Employer**” means any company that is a predecessor organization to an Employer under the Code, provided that the Employer maintains a plan of such predecessor organization.

A “**Prior XM Contribution**” means any contribution transferred to the Plan from the XM Satellite Radio Inc. 401(k) Retirement Plan.

A “**Regular Matching Contribution**” means any Matching Contribution made to the Plan at the rate specified in Article VI, other than the following:

- Additional Discretionary Matching Contributions.
- True Up Matching Contributions.

A “**Related Company**” means any corporation or business, other than an Employer, that would be aggregated with an Employer for a relevant purpose under Code Section 414, including members of an affiliated service group under Code Section 414(m), a controlled group of corporations under Code Section 414(b), or a group of trades or businesses under common control under Code Section 414(c) of which the adopting Employer is a member, and any other entity required to be aggregated with the Employer pursuant to Code Section 414(o).

A Participant’s “**Required Beginning Date**” means the following:

- for a Participant who is not a “five percent owner”, April 1 of the calendar year following the calendar year in which occurs the later of the Participant’s (i) attainment of age 70 1/2 or (ii) retirement.
- for a Participant who is a “five percent owner”, April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

A Participant is a “five percent owner” if he is a five percent owner, as defined in Code Section 416(i) and determined in accordance with Code Section 416, but without regard to whether the Plan is top-heavy, for the Plan Year ending with or within the calendar year in which the Participant attains age 70 1/2. The Required Beginning Date of a Participant who is a “five percent owner” hereunder shall not be redetermined if the Participant ceases to be a five percent owner as defined in Code Section 416(i) with respect to any subsequent Plan Year.

A “**Rollover Contribution**” means any rollover contribution to the Plan made by a Participant as may be permitted under Article V.

The “**Settlement Date**” of a Participant means the date on which a Participant’s interest under the Plan becomes distributable in accordance with Article XV.

The “**Sponsor**” means Sirius XM Radio Inc., and any successor thereto.

A Participant’s “**Spouse**” means the person to whom the Participant is legally married in accordance with the laws of the State or Commonwealth in which the Participant resides.

A “**Sub-Account**” means any of the individual sub-accounts of a Participant’s Account that is maintained as provided in Article VIII.

A “**Transfer Contribution**” means any amount transferred to the Plan on an Employee’s behalf directly from another qualified plan pursuant to a trust to trust transfer as provided in Section 21.19.

A “**True Up Matching Contribution**” means any Matching Contribution made to the Plan at an Employer’s discretion for a Plan Year that when aggregated with the Regular Matching Contributions made on a Participant’s behalf for the Plan Year will provide the maximum Matching Contribution based on the match rate in effect for the Plan Year taking into account the Participant’s 401(k) Contributions and Compensation for the full Plan Year. In the event the Employer does not affirmatively elect to make a True Up Matching Contribution for any Plan Year, the Employer shall be deemed to have elected to not make a True Up Matching Contribution for such Plan Year.

The “**Trust**” means the trust, custodial accounts, annuity contracts, or insurance contracts maintained by the Trustee under the Trust Agreement.

The “**Trust Agreement**” means any agreement or agreements entered into between the Sponsor and the Trustee relating to the holding, investment, and reinvestment of the assets of the Plan, together with all amendments thereto and shall include any agreement establishing a custodial account, an annuity contract, or an insurance contract (other than a life, health or accident, property, casualty, or liability insurance contract) for the investment of assets if the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under Code Section 401.

The “**Trustee**” means the trustee or any successor trustee which at the time shall be designated, qualified, and acting under the Trust Agreement and shall include any insurance company that issues an annuity or insurance contract pursuant to the Trust Agreement or any person holding assets in a custodial account pursuant to the Trust Agreement. The Sponsor may designate a person or persons other than the Trustee to perform any responsibility of the Trustee under the Plan, other than trustee responsibilities as defined in ERISA Section 405(c)(3), and the Trustee shall not be liable for the performance of such person in carrying out such responsibility except as otherwise provided by ERISA. The term Trustee shall include any delegate of the Trustee as may be provided in the Trust Agreement.

A “**Trust Fund**” means any fund maintained under the Trust by the Trustee.

A “**Valuation Date**” means the date or dates designated by the Sponsor and communicated in writing to the Trustee for the purpose of valuing the General Fund and each Investment Fund and adjusting Accounts and Sub-Accounts hereunder, which dates need not be uniform with respect to the General Fund, each Investment Fund, Account, or Sub-Account; provided that the General Fund and each Investment Fund shall be valued and each Account and Sub-Account shall be adjusted no less often than once annually.

The “**Vesting Service**” of an Employee means the period or periods of service credited to him under the provisions of Article II for purposes of determining his vested interest in his Employer Contributions Sub-Account, if Employer Contributions are provided for under either Article VI or Article XXII.

### **1.2 Interpretation**

Where required by the context, the noun, verb, adjective, and adverb forms of each defined term shall include any of its other forms. Wherever used herein, the masculine pronoun shall include the feminine, the singular shall include the plural, and the plural shall include the singular.

**ARTICLE II  
SERVICE**

**2.1 Special Definitions**

For purposes of this Article, the following terms have the following meanings:

The “**continuous service**” of an Employee means the continuous service credited to him in accordance with the provisions of this Article.

The “**employment commencement date**” of an employee means the date he first completes an Hour of Service.

A “**maternity/paternity absence**” means an Employee’s absence from employment with an Employer or a Related Company because of the Employee’s pregnancy, the birth of the Employee’s child, the placement of a child with the Employee in connection with the Employee’s adoption of the child, or the caring for the Employee’s child immediately following the child’s birth or adoption. An Employee’s absence from employment will not be considered a maternity/paternity absence unless the Employee furnishes the Administrator such timely information as may reasonably be required to establish that the absence was for one of the purposes enumerated in this paragraph and to establish the number of days of absence attributable to such purpose.

The “**reemployment commencement date**” of an Employee means the first date following a “service break” on which he again completes an Hour of Service.

A “**service break**” with respect to an Employee means any 12-consecutive-month period beginning on the Employee’s “severance date” and anniversaries of his “severance date” in which he does not complete an Hour of Service.

The “**severance date**” of an Employee means the earlier of (i) the date on which he retires, dies, or his employment with all Employers and Related Companies is otherwise terminated, or (ii) the first anniversary of the first date of a period during which he is absent from work with all Employers and Related Companies for any other reason; provided that if he terminates employment with or is absent from work with all Employers and Related Companies on account of service with the armed forces of the United States, he shall not incur a “severance date” if he is eligible for reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 and he returns to work with an Employer or a Related Company within the period during which he retains such reemployment rights, but, if he does not return to work within such period, his “severance date” shall be the earlier of the date which is one year after his absence commenced or the last day of the period during which he retains such reemployment rights; and provided, further, that if an Employee is on a “maternity/paternity absence” beyond the first anniversary of the first day of such absence, he shall not incur a “severance date” if he returns to employment before the second anniversary of the first day of such absence but, if he does not return within such period, his “severance date” shall be the second anniversary of the first date of such “maternity/paternity absence”; and provided, further, that if an Employee is on a paid leave of absence beyond the first anniversary of the first day of such absence, he shall not incur a “severance date” if he returns to employment before the second anniversary of the first day of such absence but, if he does not return within such period, his “severance date” shall be the first anniversary of the first date of such paid leave of absence.



## **2.2 Crediting of Hours of Service**

An Employee will be credited with an Hour of Service for each hour for which he is paid, or entitled to payment, for the performance of duties for an Employer, a Predecessor Employer, or any Related Company. Except as otherwise specifically provided with respect to Predecessor Employers, Hours of Service shall not be credited for employment with a corporation or business prior to the date such corporation or business becomes a Related Company.

## **2.3 Crediting of "Continuous Service"**

An Employee shall be credited with "continuous service" for the aggregate of the periods of time between his "employment commencement date" or any "reemployment commencement date" and the "severance date" that next follows such "employment commencement date" or "reemployment commencement date"; provided that an Employee who has a "reemployment commencement date" within the 12-consecutive-month period following the earlier of the first date of his absence or his "severance date" shall be credited with "continuous service" for the period between his "severance date" and "reemployment commencement date".

## **2.4 Crediting Eligibility Service**

An Employee shall be credited with Eligibility Service equal to his "continuous service".

Eligibility Service shall be credited in full calendar months.

## **2.5 Vesting Service**

An Employee shall be credited with Vesting Service equal to his "continuous service". Vesting Service shall be computed to the nearest 1/12th of a year treating each calendar month or portion of a calendar month in which an Employee is credited with "continuous service" as 1/12th year of Vesting Service.

## **2.6 Crediting of Service on Transfer or Amendment**

Notwithstanding any other provision of the Plan to the contrary, if as a result of a Plan amendment or a transfer from employment covered under another qualified plan maintained by an Employer or a Related Company, the service crediting method applicable to an Employee changes between the elapsed time method described in Treasury Regulations Section 1.410(a)-7 and the Hours of Service method described in Department of Labor Regulations Sections 2530.200 through 2530.203, an affected Employee shall be credited with Eligibility and Vesting Service hereunder as provided in Treasury Regulations Section 1.410(a)-7(f)(1).

## **2.7 Crediting of Service to Leased Employees**

To the extent required by law, a Leased Employee working for an Employer or a Related Company shall be considered an employee of such Employer or Related Company for purposes of Eligibility and Vesting Service crediting under the Plan, but shall not be eligible to participate in the Plan. Such Leased Employee shall also be considered an employee of such Employer or Related Company for purposes of applying Code Sections 401(a)(3), (4), (7), and (16), and 408(k), 415, and 416.

**ARTICLE III  
ELIGIBILITY**

**3.1 Eligibility**

Each Covered Employee who was an Eligible Employee immediately prior to January 1, 2009 shall continue to be an Eligible Employee on January 1, 2009.

Each other Covered Employee shall become an Eligible Employee as of the applicable Enrollment Date upon satisfying all of the following requirements:

- (a) he has been classified as a Class A Employee;
- (b) he has attained age 21; and
- (c) he has completed 1 month of Eligibility Service.

**3.2 Transfers of Employment**

If an Employee is transferred directly from employment with an Employer or with a Related Company in a capacity other than as a Covered Employee to employment as a Covered Employee, he shall become an Eligible Employee as of the later of the date he is so transferred or the date he would have become an Eligible Employee in accordance with the provisions of Section 3.1 if he had been a Covered Employee for his entire period of employment with the Employer or Related Company.

**3.3 Reemployment**

If a person who terminated employment with an Employer and all Related Companies is reemployed as a Covered Employee and if he had been an Eligible Employee prior to his termination of employment, he shall again become an Eligible Employee on the date he is reemployed. If such person was not an Eligible Employee prior to his termination of employment, but was a Covered Employee prior to such termination and had satisfied the requirements of Section 3.1 prior to such termination, he shall become an Eligible Employee as of the later of the date he is reemployed or the date he would have become an Eligible Employee in accordance with the provisions of Section 3.1 if he had continued employment as a Covered Employee. Otherwise, the eligibility of a person who terminated employment with an Employer and all Related Companies and who is reemployed by an Employer or a Related Company to participate in the Plan shall be determined in accordance with Section 3.1 or 3.2.

**3.4 Notification Concerning New Eligible Employees**

Each Employer shall notify the Administrator as soon as practicable of Employees becoming Eligible Employees as of any date.

### **3.5 Effect and Duration**

Upon becoming an Eligible Employee, a Covered Employee shall be entitled to make 401(k) Contributions to the Plan in accordance with the provisions of Article IV and receive allocations of Employer Contributions in accordance with the provisions of Article VI (provided he meets any applicable requirements thereunder) and shall be bound by all the terms and conditions of the Plan and the Trust Agreement. A person shall continue as an Eligible Employee eligible to make 401(k) Contributions to the Plan and to participate in allocations of Employer Contributions only so long as he continues employment as a Covered Employee.

**ARTICLE IV**  
**401(k) CONTRIBUTIONS**

**4.1 401(k) Contributions**

Effective as of the date he becomes an Eligible Employee, each Eligible Employee may elect, in accordance with rules prescribed by the Administrator, to have 401(k) Contributions made to the Plan on his behalf by his Employer as hereinafter provided. An Eligible Employee's election shall include his authorization for his Employer to reduce his Compensation and to make 401(k) Contributions on his behalf. An Eligible Employee who does not make a timely election to have 401(k) Contributions made to the Plan as of the first Enrollment Date he becomes eligible to participate shall be deemed to have elected a 0% reduction and may only change such deemed election pursuant to the provisions of this Article for amending reduction authorizations.

401(k) Contributions on behalf of an Eligible Employee shall commence with the first payment of Compensation made on or after the Enrollment Date on which he first becomes eligible to participate.

**4.2 Amount of 401(k) Contributions**

The amount of 401(k) Contributions to be made each payroll period on behalf of an Eligible Employee by his Employer shall be a percentage, expressed in the increments prescribed by the Administrator, of the Eligible Employee's Compensation of not less than 1 percent nor more than 50 percent. In the event an Eligible Employee elects to have his Employer make 401(k) Contributions on his behalf, his Compensation shall be reduced for each payroll period by the percentage he elects to have contributed on his behalf to the Plan in accordance with the terms of his currently effective reduction authorization.

**4.3 Catch-Up 401(k) Contributions**

An Eligible Employee who is or will be age 50 or older by the end of the taxable year may make Catch-Up 401(k) Contributions to the Plan in excess of the limits otherwise applicable to 401(k) Contributions under the Plan, but not in excess of the dollar limit in effect under Code Section 414(v)(2)(B)(i) for the taxable year (\$5,000 for 2006). Otherwise applicable limits that do not apply to Catch-Up 401(k) Contributions include, but are not limited to, the percentage of Compensation limit specified in Section 4.2, the Code Section 402(g) limit described in Article VII, the limit on 401(k) Contributions made on behalf of Highly Compensated Employees, and the Code Section 415 limit on annual additions described in Article VII.

If the percentage of Compensation limit specified in Section 4.2 changes during the Plan Year, the applicable limit under Section 4.2 for purposes of determining Catch-Up 401(k) Contributions for an Eligible Employee for such Plan Year shall be the sum of the dollar amounts of the limits applicable to the Eligible Employee for each portion of the Plan Year.

#### **4.4 Contributions Limited to Effectively Available Compensation**

Notwithstanding any other provision of the Plan or of an Eligible Employee's salary reduction authorization, in no event will 401(k) Contributions, including Catch-Up 401(k) Contributions, be made for a payroll period in excess of an Eligible Employee's "effectively available" Compensation. Effectively available Compensation means the Compensation remaining after all other required amounts have been withheld, e.g., tax withholding, withholding for contributions to a cafeteria plan under Code Section 125, etc.

#### **4.5 Amendments to Reduction Authorization**

An Eligible Employee may elect, in the manner prescribed by the Administrator, to change the amount of his future Compensation that his Employer contributes on his behalf as 401(k) Contributions. An Eligible Employee may amend his reduction authorization effective as of the first day of each month. Effective on and after January 1, 2010, in accordance with rules prescribed by the Administrator, an Eligible Employee's amendment to his reduction authorization will be effective as soon as administratively feasible.

An Eligible Employee who amends his reduction authorization shall be limited to selecting an amount of his Compensation that is otherwise permitted under this Article IV. 401(k) Contributions shall be made on behalf of such Eligible Employee by his Employer pursuant to his properly amended reduction authorization commencing with Compensation paid to the Eligible Employee on or after the date such amendment is effective, until otherwise altered or terminated in accordance with the Plan.

#### **4.6 Suspension of 401(k) Contributions**

An Eligible Employee on whose behalf 401(k) Contributions are being made may elect, in the manner prescribed by the Administrator, to have such contributions suspended at any time by giving such number of days advance notice of his election as the Administrator may prescribe. Any such voluntary suspension shall take effect commencing with Compensation paid to such Eligible Employee on or after the expiration of the required notice period and shall remain in effect until 401(k) Contributions are resumed as hereinafter set forth.

#### **4.7 Resumption of 401(k) Contributions**

An Eligible Employee who has voluntarily suspended his 401(k) Contributions may elect, in the manner prescribed by the Administrator, to have such contributions resumed. An Eligible Employee may make such election at such time or times during the Plan Year as the Administrator may prescribe, by giving such number of days advance notice of his election as the Administrator may prescribe.

#### **4.8 Delivery of 401(k) Contributions**

As soon after the date an amount would otherwise be paid to an Eligible Employee as it can reasonably be separated from Employer assets, each Employer shall cause to be delivered to the Trustee in cash all 401(k) Contributions attributable to such amounts. In no event shall an Employer deliver 401(k) Contributions to the Trustee on behalf of an Eligible Employee prior to the date the Eligible Employee performs the services with respect to which the 401(k) Contribution is being made, unless such pre-funding is to accommodate a bona fide administrative concern and is not for the principal purpose of accelerating deductions.

#### **4.9 Vesting of 401(k) Contributions**

A Participant's vested interest in his 401(k) Contributions Sub-Account shall be at all times 100 percent.

**ARTICLE V  
AFTER-TAX AND ROLLOVER CONTRIBUTIONS**

**5.1 No After-Tax Contributions**

There shall be no After-Tax Contributions made to the Plan and no After-Tax Contributions may be transferred to the Plan.

**5.2 Rollover Contributions**

Subject to any restrictions contained in this Article, a Covered Employee who is eligible to receive or receives an “eligible rollover distribution,” within the meaning of Code Section 402(c)(4), or a distribution from an individual retirement account or annuity that is eligible for rollover to the Plan in accordance with the provisions of Code Section 408(d)(3)(B) may elect to make a Rollover Contribution to the Plan. The Administrator may require a Covered Employee to provide it with such information as it deems necessary or desirable to show that he is entitled to roll over such distribution to a qualified retirement plan. A Covered Employee shall make a Rollover Contribution to the Plan by delivering or causing to be delivered to the Trustee the cash that constitutes the Rollover Contribution amount.

A Covered Employee who makes a Rollover Contribution to the Plan before becoming an Eligible Employee in accordance with the provisions of Article III shall be treated as a Participant for purposes of his Rollover Contributions.

**5.3 Direct Rollovers to Plan**

The Plan will accept “eligible rollover distributions” that are rolled over directly to the Plan (“direct rollovers”) from the following:

- a qualified plan described in Code Section 401(a) or 403(a), excluding amounts attributable to designated Roth contributions, as described in Code Section 402A, and after-tax employee contributions;
- an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and
- an individual retirement account or annuity described in Code Section 408(a) or 408(b), excluding amounts attributable to designated Roth contributions, as described in Code Section 402A, and after-tax employee contributions.

The Trustee may, in its discretion, accept all or a portion of a direct rollover in the form of securities in lieu of cash, to the extent such securities are acceptable to the Trustee.



#### **5.4 Participant Rollovers to Plan**

The Plan will accept “eligible rollover distributions” that are first distributed to a Covered Employee (“participant rollovers”) from the following:

- a qualified plan described in Code Section 401(a) or 403(a), excluding amounts attributable to designated Roth contributions, as described in Code Section 402A, or after-tax employee contributions;
- an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and
- an individual retirement account or annuity described in Code Section 408(a) or 408(b), excluding amounts attributable to designated Roth contributions, as described in Code Section 402A, and after-tax employee contributions.

A Covered Employee who received a distribution that he is rolling over to the Plan, must deliver the cash constituting his Rollover Contribution to the Trustee within 60 days of receipt of the eligible rollover distribution. Such delivery must be made in the manner prescribed by the Administrator.

#### **5.5 Restrictions on Rollover Contributions**

Rollover Contributions to the Plan are subject to the following:

- the Plan shall not accept a Rollover Contribution of any promissory note attributable to a plan loan; and
- a participant rollover may not include designated Roth contributions, as described in Code Section 402A, or after-tax employee contributions.

#### **5.6 Vesting of Rollover Contributions**

A Participant’s vested interest in his Rollover Contributions Sub-Account shall be at all times 100 percent.

**ARTICLE VI  
EMPLOYER CONTRIBUTIONS**

**6.1 Contribution Period**

The Contribution Periods for Employer Contributions shall be as follows:

- (a) The Contribution Period for Regular Matching Contributions under the Plan is each semi-monthly period.
- (b) The Contribution Period for True Up Matching Contributions is each Plan Year.
- (c) The Contribution Period for Additional Discretionary Matching Contributions is each Plan Year.
- (d) The Contribution Period for Nonelective Contributions under the Plan is each Plan Year.

**6.2 Nonelective Contributions**

Each Employer may, in its discretion, make a Nonelective Contribution to the Plan for the Contribution Period in an amount determined by the Employer.

**6.3 Allocation of Nonelective Contributions**

Any Nonelective Contribution made by an Employer for a Contribution Period shall be allocated among its Eligible Employees during the Contribution Period who have met the allocation requirements for Nonelective Contributions described in this Article. The allocable share of each such Eligible Employee shall be in the ratio which his Compensation from the Employer for the Contribution Period bears to the aggregate of such Compensation for all such Eligible Employees.

**6.4 Amount and Allocation of Regular Matching Contributions**

Each Employer may, in its discretion, make a Regular Matching Contribution to the Plan for each Contribution Period on behalf of each of its Eligible Employees who has met the allocation requirements for Regular Matching Contributions described in this Article.

The amount of any such Regular Matching Contribution with respect to similarly situated Eligible Employees, as determined by the Employer in a non-discriminatory manner, shall be equal to a uniform percentage, determined by the Employer, in its discretion, of the 401(k) Contributions (other than Catch-Up 401(k) Contributions) made for the Contribution Period on behalf of such similarly situated Eligible Employees. Notwithstanding the foregoing, the Employer may designate a different uniform match percentage applicable to 401(k) Contributions above and below designated levels of Compensation, provided that the match percentage does not increase as an Eligible Employee's 401(k) Contributions increase.

### **6.5 Additional Discretionary Matching Contributions**

In addition to its Regular Matching Contribution, each Employer may make an Additional Discretionary Matching Contribution to the Plan for each Contribution Period on behalf of each of its Eligible Employees who has met the allocation requirements for Additional Discretionary Matching Contributions described in this Article. The amount of any such Additional Discretionary Matching Contribution with respect to similarly situated Eligible Employees, as determined by the Employer in a non-discriminatory manner, shall be equal to a uniform percentage, determined by the Employer, in its discretion, of the 401(k) Contributions (other than Catch-Up 401(k) Contributions) made on behalf of each such similarly situated Eligible Employee for the Contribution Period.

### **6.6 Limits on Matching Contributions**

Notwithstanding any other provision of this Article to the contrary, the following limits apply in determining the amount and allocation of Regular Matching Contributions with respect to an Eligible Employee for a Contribution Period:

- (a) 401(k) Contributions that exceed the dollar amount and/or percentage of Compensation specified by the Employer, in its discretion, for the Contribution Period are excluded from the match. Compensation earned by an Eligible Employee during a Contribution Period, but prior to the date on which the Employee first became an Eligible Employee, shall be excluded in applying the limitation contained in this paragraph; and
- (b) Catch-Up 401(k) Contributions are excluded from the match.

The exclusions described above shall not apply in determining the amount and allocation of any Additional Discretionary Matching Contribution made by an Employer.

### **6.7 True Up Matching Contributions**

An Employer may, in its discretion, elect to make a True Up Matching Contribution on behalf of each of its Eligible Employees during the Contribution Period who has met the allocation requirements for True Up Matching Contributions described in this Article. Such True Up Matching Contribution shall be in the amount which, when aggregated with the Regular Matching Contributions made with respect to Contribution Periods within such Plan Year, will provide the maximum Matching Contribution designated by the Employer for the Plan Year with respect to the Eligible Employee's 401(k) Contributions for the full Plan Year.

#### **6.8 Verification of Amount of Employer Contributions by the Sponsor**

The Sponsor shall verify the amount of Employer Contributions to be made by each Employer in accordance with the provisions of the Plan. Notwithstanding any other provision of the Plan to the contrary, the Sponsor shall determine the portion of the Employer Contribution to be made by each Employer with respect to a Covered Employee who transfers from employment with one Employer as a Covered Employee to employment with another Employer as a Covered Employee.

#### **6.9 Payment of Employer Contributions**

Employer Contributions made for a Contribution Period shall be paid in cash or in qualifying employer securities, as defined in ERISA Section 407(d)(5), to the Trustee within the period of time required under the Code in order for the contribution to be deductible by the Employer in determining its Federal income taxes for the Plan Year.

Any in kind contribution made under the terms of the Plan shall be discretionary and unencumbered.

In no event shall an Employer deliver Matching Contributions to the Trustee on behalf of an Eligible Employee prior to the date the Eligible Employee performs the services with respect to which the Matching Contribution is being made, unless such pre-funding is to accommodate a bona fide administrative concern and is not for the principal purpose of accelerating deductions.

#### **6.10 Allocation Requirements for Employer Contributions**

An Eligible Employee shall be eligible to receive an allocation of Employer Contributions under this Article only if he satisfies any requirements specified in the applicable contribution Section and also meets the requirements of this Section.

- (a) A person who was an Eligible Employee during a Contribution Period shall be eligible to receive an allocation of Nonelective Contributions for such Contribution Period only if he is employed as a Covered Employee on the last day of the Contribution Period.
- (b) A person who was an Eligible Employee at any time during a Contribution Period shall be eligible to receive an allocation of Regular Matching Contributions for such Contribution Period.
- (c) A person who was an Eligible Employee at any time during a Contribution Period shall be eligible to receive an allocation of Additional Discretionary Matching Contributions for such Contribution Period.

(d) A person who was an Eligible Employee at any time during a Contribution Period shall be eligible to receive an allocation of True Up Matching Contributions for such Contribution Period.

**6.11 Vesting of Employer Contributions**

A Participant's vested interest in his Prior XM Contributions Sub-Account shall be at all times 100%.

A Participant's vested interest in his Nonelective, Regular, Additional Discretionary, and True Up Matching Contributions Sub-Accounts shall be determined in accordance with the following schedule:

<u>Years of Vesting Service</u>	<u>Vested Interest</u>
Less than 1	0%
1, but less than 2	33%
2, but less than 3	67%
3 or more	100%

**6.12 100% Vesting Events**

Notwithstanding any other provision of the Plan to the contrary, if a Participant is employed by an Employer or a Related Company on his Normal Retirement Date, the date he becomes Disabled, or the date he dies, his vested interest in his full Employer Contributions Sub-Account shall be 100%, without regard to the number of his years of Vesting Service.

### **6.13 Election of Former Vesting Schedule**

If the Sponsor adopts an amendment to the Plan that directly or indirectly affects the computation of a Participant's vested interest in his Employer Contributions Sub-Account, any Participant with three or more years of Vesting Service shall have a right to have his vested interest in his Employer Contributions Sub-Account continue to be determined under the vesting provisions in effect prior to the amendment rather than under the new vesting provisions, unless the vested interest of the Participant in his Employer Contributions Sub-Account under the Plan as amended is not at any time less than such vested interest determined without regard to the amendment. A Participant shall exercise his right under this Section by giving written notice of his exercise thereof to the Administrator within 60 days after the latest of (i) the date he receives notice of the amendment from the Administrator, (ii) the effective date of the amendment, or (iii) the date the amendment is adopted. Notwithstanding the foregoing, a Participant's vested interest in his Employer Contributions Sub-Account on the effective date of such an amendment shall not be less than his vested interest in his Employer Contributions Sub-Account immediately prior to the effective date of the amendment.

### **6.14 Forfeitures to Reduce Employer Contributions**

Notwithstanding any other provision of the Plan to the contrary, the amount of the Employer Contribution required under this Article for a Plan Year shall be reduced by the amount of any forfeitures occurring during the Plan Year or any prior Plan Year that are not used to pay Plan expenses and that are applied against Employer Contributions as provided in Article VII or XIV, as applicable.

**ARTICLE VII  
LIMITATIONS ON CONTRIBUTIONS**

**7.1 Definitions**

For purposes of this Article, the following terms have the following meanings:

The “**annual addition**” with respect to a Participant for a “limitation year” means the sum of the following amounts allocated to the Participant for the “limitation year”:

- (a) all employer contributions allocated to the Participant’s account under any qualified defined contribution plan maintained by an Employer or a Related Company, including “elective contributions” and amounts attributable to forfeitures applied to reduce the employer’s contribution obligation, but excluding “catch-up contributions”;
- (b) all “employee contributions” allocated to the Participant’s account under any qualified defined contribution plan maintained by an Employer or a Related Company or any qualified defined benefit plan maintained by an Employer or a Related Company if separate accounts are maintained under the defined benefit plan with respect to such employee contributions;
- (c) all forfeitures allocated to the Participant’s account under any qualified defined contribution plan maintained by the Employer or a Related Company;
- (d) all amounts allocated to an individual medical benefit account, as described in Code Section 415(1)(2), established for the Participant as part of a pension or annuity plan maintained by the Employer or a Related Company;
- (e) if the Participant is a key employee, as defined in Code Section 419A(d)(3), all amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after that date, that are attributable to post-retirement medical benefits allocated to the Participant’s separate account under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer or a Related Company; and
- (f) all allocations to the Participant under a simplified employee pension.

A “**catch-up contribution**” means any elective deferral, as defined in Code Section 414(v)(2)(C), that is treated as a catch-up contribution in accordance with the provisions of Code Section 414(v).

The “**contribution percentage**” with respect to an “eligible participant” for a particular Plan Year means the ratio of the sum of the included contributions, described below, to the “eligible participant’s” “test compensation” for such Plan Year. Contributions made on behalf of an “eligible participant” for the Plan Year that are used in computing the “eligible participant’s” “contribution percentage” include the following:

- Matching Contributions, except as specifically provided below; and
- if elected by the Sponsor, 401(k) Contributions, including Catch-Up 401(k) Contributions, to the extent such 401(k) Contributions are not included in determining the “eligible participant’s” “deferral percentage” for such Plan Year.

Notwithstanding the foregoing, the following Matching Contributions are not included in computing an “eligible participant’s” “contribution percentage” for a Plan Year:

- Matching Contributions that are forfeited because they relate to 401(k) Contributions that are distributed as “excess contributions”, “excess deferrals”, or because they exceed the Code Section 402(g) limit;
- contributions to the Plan made pursuant to Code Section 414(u) that are treated as Matching Contributions; and
- Matching Contributions that are forfeited because they relate to 401(k) Contributions that are re-characterized as Catch-Up 401(k) Contributions.

Matching Contributions in excess of 100% of the 401(k) Contributions of an “eligible participant” who is not a Highly Compensated Employee for a Plan Year shall not be used in computing such “eligible participant’s” “contribution percentage” for the Plan Year to the extent that such Matching Contributions exceed the greater of (i) 5% of the “eligible participant’s” “test compensation” for the Plan Year or (ii) the product of 2 times the Plan’s “representative match rate” multiplied by the “eligible participant’s” 401(k) Contributions for the Plan Year. The Plan’s “representative match rate” is the lowest “match rate” of any “eligible participant” who is not a Highly Compensated Employee for the Plan Year in either (i) the group consisting of half of all “eligible participants” who are not Highly Compensated Employees for the Plan Year or (ii) the group of all “eligible participants” who are not Highly Compensated Employees for the Plan Year and who are employed by the Employer or a Related Company on the last day of the Plan Year and who make 401(k) Contributions for the Plan Year, whichever results in the greater amount. An “eligible participant’s” “match rate” means the Matching Contributions made on behalf of the “eligible participant” for the Plan Year divided by the “eligible participant’s” 401(k) Contributions for the Plan Year; provided, however, that if Matching Contributions are made at different rates for different levels of Compensation, the “match rate” shall be determined assuming 401(k) Contributions equal to 6% of “test compensation”.



To be included in computing an “eligible participant’s” “contribution percentage” for a Plan Year, contributions must be allocated to the “eligible participant’s” Account as of a date within such Plan Year and must be made to the Plan before the end of the 12-month period immediately following the Plan Year to which the contributions relate. For Plan Years in which the prior year testing method is used in applying the nondiscrimination requirements applicable to Matching Contributions, contributions used in computing the “contribution percentage” for the “testing year” of a non-Highly Compensated Employee must be made before the last day of the Plan Year for which the test is being applied.

If an Employer elects to change from the current year testing method to the prior year testing method, the following shall not be included in computing a non-Highly Compensated Employee’s “contribution percentage” for the Plan Year immediately preceding the Plan Year in which the prior year testing method is first effective:

- 401(k) Contributions that were included in computing the “eligible participant’s” “contribution percentage” under the current year method for such immediately preceding Plan Year.

The determination of an “eligible participant’s” “contribution percentage” shall be made after any reduction required to satisfy the Code Section 415 limitations is made as provided in this Article VII and shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

The “**deferral percentage**” with respect to an Eligible Employee for a particular Plan Year means the ratio of the sum of the included contributions, described below, to the Eligible Employee’s “test compensation” for such Plan Year. Contributions made on behalf of an Eligible Employee for the Plan Year that are used in computing the Eligible Employee’s “deferral percentage” include the following:

- 401(k) Contributions, except as specifically provided below.

Notwithstanding the foregoing, the following 401(k) Contributions are not included in computing an Eligible Employee’s “deferral percentage” for a Plan Year:

- 401(k) Contributions that are distributed to a non-Highly Compensated Employee in accordance with the provisions of Section 7.2 because they exceed the Code Section 402(g) limit;
- contributions made to the Plan pursuant to Code Section 414(u) that are treated as 401(k) Contributions;
- Catch-Up 401(k) Contributions, except to the extent the Eligible Employee’s 401(k) Contributions are re-characterized as Catch-Up 401(k) Contributions as a result of a failure to satisfy the nondiscrimination requirements applicable to 401(k) Contributions; and
- 401(k) Contributions that are included in determining an Eligible Employee’s “contribution percentage” for the Plan Year.

To be included in computing an Eligible Employee's "deferral percentage" for a Plan Year, contributions must be allocated to the Eligible Employee's Account as of a date within such Plan Year and be made to the Plan before the end of the 12-month period immediately following the Plan Year to which the contributions relate. For Plan Years in which the prior year testing method is used in applying the nondiscrimination requirements applicable to 401(k) Contributions, contributions used in computing the "deferral percentage" for the "testing year" of a non-Highly Compensated Employee must be made before the last day of the Plan Year for which the test is being applied.

If an Employer elects to change from the current year testing method to the prior year testing method, the following shall not be included in computing a non-Highly Compensated Employee's "deferral percentage" for the Plan Year immediately preceding the Plan Year in which the prior year testing method is first effective:

- 401(k) Contributions that were included in computing the Eligible Employee's "contribution percentage" under the current year method for such immediately preceding Plan Year.

The determination of an Eligible Employee's "deferral percentage" shall be made after any reduction required to satisfy the Code Section 415 limitations is made as provided in this Article VII and shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

An "**elective contribution**" means any employer contribution made to a plan maintained by an Employer or a Related Company on behalf of a Participant in lieu of cash compensation pursuant to his election (whether such election is an active election or a passive election) to defer under any qualified CODA as described in Code Section 401(k), any simplified employee pension cash or deferred arrangement as described in Code Section 402(h)(1)(B), or any plan as described in Code Section 501(c)(18), and any contribution made on behalf of the Participant by an Employer or a Related Company for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. For purposes of applying the limitations described in this Article VII, the term "elective contribution" includes designated Roth contributions and excludes "catch-up contributions".

An "**elective 401(k) contribution**" means any employer contribution made to a plan maintained by an Employer or a Related Company on behalf of a Participant in lieu of cash compensation pursuant to his election (whether such election is an active election or a passive election) to defer under any qualified CODA as described in Code Section 401(k) including a designated Roth contribution. For purposes of applying the limitations described in this Article VII, the term "elective 401(k) contribution" excludes "catch-up contributions".

An "**eligible participant**" means any Eligible Employee who is eligible to have 401(k) Contributions made on his behalf (if 401(k) Contributions are taken into account in determining "contribution percentages"), or to participate in the allocation of Matching Contributions.

Notwithstanding the foregoing, the following Employees shall not be included as “eligible participants”:

- Eligible Employees who are covered by a collective bargaining agreement between their Employer and employee representatives if retirement benefits were the subject of good faith bargaining.

An “**employee contribution**” means any employee after-tax contribution allocated to an Eligible Employee’s account under any qualified plan of an Employer or a Related Company.

An “**excess aggregate contribution**” means any contribution made to the Plan on behalf of a Participant that exceeds the limitations described in Section 7.7.

An “**excess contribution**” means any contribution made to the Plan on behalf of a Participant that exceeds the limitations described in Section 7.4.

An “**excess deferral**” with respect to a Participant means that portion of a Participant’s 401(k) Contributions, excluding Catch-Up 401(k) Contributions, for his taxable year that, when added to amounts deferred for such taxable year under other plans or arrangements described in Code Section 401(k), 408(k), or 403(b) (other than any such plan or arrangement that is maintained by an Employer or a Related Company and excluding any “catch-up contributions”), would exceed the dollar limit imposed under Code Section 402(g) as in effect on January 1 of the calendar year in which such taxable year begins and is includible in the Participant’s gross income under Code Section 402(g).

The “**415 compensation**” of a Participant for any “limitation year” means the Participant’s remuneration for services, including (A) his wages, salaries, fees for professional service, and all other amounts received (without regard to whether such amounts are paid in cash) for personal services actually rendered in the course of employment with an Employer or a Related Company, to the extent the amounts would have been received and includible in gross income, including, but not limited to, commissions paid to salesperson, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan described in Treasury Regulations Section 1.62-2(c), (B) in case of a Participant who is an employee within the meaning of Code Section 401(c)(1), the Participant’s earned income, as described in Code Section 401(c)(2) and regulations issued thereunder, (C) amounts described in Code Section 104(a)(3), 105(a), or 105(h), but only to the extent such amounts are includible in the gross income of the Participant, (D) amounts paid or reimbursed by the Employer or a Related Company for moving expenses incurred by the

Participant, but only to the extent it is reasonable to believe the amounts are not deductible by the Participant under Code Section 217, (E) the value of a non-statutory option (an option other than a statutory option, as defined in Treasury Regulations Section 1.421-1(b)) granted to the Participant by the Employer or a Related Company, but only to the extent that the value of the option is includible in the gross income of the Participant for the taxable year in which granted, (F) amounts includible in the gross income of the Participant upon making an election described in Code Section 83(b), and (G) amounts that are includible in the gross income of the Participant under the rules of Code Section 409A or 457(f)(1)(A) or because the amounts are constructively received by the Participant. "415 compensation" excludes (i) contributions (other than elective contributions described in Code Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made on behalf of the Participant by an Employer or a Related Company to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p)), whether or not qualified, to the extent that, before application of the limitations of Code Section 415 to such plan, the contributions are not includible in the gross income of the Participant for the taxable year in which contributed, (ii) any distributions from a plan of deferred compensation, whether or not qualified, (except amounts received pursuant to an unfunded non-qualified plan in the year such amounts are includible in the gross income of the Participant), (iii) amounts realized from the exercise of a non-qualified option or when restricted stock or other property held by the Participant either becomes freely transferable or is no longer subject to substantial risk of forfeiture, (iv) amounts received from the sale, exchange or other disposition of stock acquired under a qualified stock option, (v) any other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code Section 125), and (vi) other items that are similar to the items listed in (i) through (v) above.

Effective for "limitation years" beginning in 2005 and thereafter, "415 compensation" does not include amounts paid to a Participant following severance from employment unless such amounts are paid within 2 1/2 months of the Participant's severance from employment and (i) would otherwise have been paid to the Participant in the course of his employment and are regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation or (ii) are payments for accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use such leave if his employment had continued.

"415 compensation" also includes (i) any elective deferral, as defined in Code Section 402(g)(3) and (ii) any amount contributed or deferred by the Employer or Related Company at the Participant's election which is not includable in the Participant's gross income by reason of Code Section 125, 132(f)(4), or 457.

In no event, however, shall the “415 compensation” of a Participant taken into account under the Plan for any “limitation year” exceed the limit in effect under Code Section 401(a)(17) (\$220,000 for “limitation years” beginning in 2006, subject to adjustment annually as provided in Code Sections 401(a)(17)(B) and 415(d); provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for “limitation years” beginning in such calendar year). If the “415 compensation” of a Participant is determined over a period of time that contains fewer than 12 calendar months, then the annual compensation limitation described above shall be adjusted with respect to that Participant by multiplying the annual compensation limitation in effect for the Plan Year by a fraction the numerator of which is the number of full months in the period and the denominator of which is 12; provided, however, that no proration is required for a Participant who is covered under the Plan for fewer than 12 months.

The “**gap period**” means the period between the close of the Plan Year in which “excess contributions” were made and the date the contributions are distributed.

A “**limitation year**” means the Plan Year.

A “**matching contribution**” means any employer contribution allocated to an Eligible Employee’s account under any plan of an Employer or a Related Company solely on account of “elective contributions” made on his behalf or “employee contributions” made by him.

A “**qualified matching contribution**” means any employer contribution allocated to an Eligible Employee’s account under any plan of an Employer or a Related Company solely on account of “elective contributions” made on his behalf or “employee contributions” made by him that is a qualified matching contribution as defined in regulations issued under Code Section 401(k), is nonforfeitable when made, and is distributable only as permitted in regulations issued under Code Section 401(k).

A “**qualified nonelective contribution**” means any employer contribution allocated to an Eligible Employee’s account under any plan of an Employer or a Related Company that the Participant could not elect instead to receive in cash until distributed from the Plan, that is a qualified nonelective contribution as defined in Code Sections 401(k) and 401(m) and regulations issued thereunder, is nonforfeitable when made, and is distributable (other than for hardships) only as permitted in regulations issued under Code Section 401(k).

The “**test compensation**” of an Eligible Employee or “eligible participant” for any Plan Year means the following, unless the Administrator elects to substitute a different definition of compensation that satisfies the requirements of Code Section 414(s): his wages, salaries, fees for professional service, and all other amounts received for personal services actually rendered in the course of employment with an Employer or a Related Company for such Plan Year, but excluding (i) contributions (other than

elective contributions described in Code Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made on behalf of the Participant by an Employer or a Related Company to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p)), whether or not qualified, to the extent that, before application of the limitations of Code Section 415 to such plan, the contributions are not includible in the gross income of the Participant for the taxable year in which contributed, (ii) any distributions from a plan of deferred compensation, whether or not qualified, (except amounts received pursuant to an unfunded non-qualified plan in the year such amounts are includible in the gross income of the Participant), (iii) amounts realized from the exercise of a non-qualified option or when restricted stock or other property held by the Participant either becomes freely transferable or is no longer subject to substantial risk of forfeiture, (iv) amounts received from the sale, exchange or other disposition of stock acquired under a qualified stock option, (v) any other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code Section 125), and (vi) other items that are similar to the items listed in (i) through (v) above.

“Test compensation” includes (i) any elective deferral, as defined in Code Section 402(g)(3), and (ii) any amount contributed or deferred by the Employer or a Related Company at the Participant’s election which is not includable in the Participant’s gross income by reason of Code Section 125, 132(f)(4), or 457, provided that any such amount is attributable to compensation that would otherwise be included in “test compensation” as defined above.

“Test compensation” does not include amounts paid to a Participant following severance of employment unless such amounts are paid within 2 1/2 months of the Participant’s severance and (i) would otherwise have been paid to the Participant in the course of his employment and are regular compensation for services during the Participant’s regular working hours, compensation for services outside the Participant’s regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation or (ii) are payments for accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use such leave if his employment had continued.

If elected by the Administrator with respect to a Plan Year, “test compensation” may exclude amounts earned by an individual during the Plan Year, but while the individual was not an Eligible Employee or “eligible participant”.

In no event, shall the “test compensation” of a Participant taken into account under the Plan for any Plan Year exceed the limit in effect under Code Section 401(a)(17) (\$220,000 for Plan Years beginning in 2006, subject to adjustment annually as provided in Code Sections 401(a)(17)(B) and 415(d); provided that the dollar increase in effect on January 1 of any calendar year, if any, is effective for Plan Years beginning in such calendar year).

The “testing year” under the prior year testing method means the Plan Year immediately preceding the Plan Year being tested.

## 7.2 Code Section 402(g) Limit

In no event shall the amount of the 401(k) Contributions, excluding Catch-Up 401(k) Contributions, made on behalf of an Eligible Employee for his taxable year, when aggregated with any “elective contributions” made on behalf of the Eligible Employee under any other plan of an Employer or a Related Company for his taxable year, exceed the dollar limit imposed under Code Section 402(g), as in effect on January 1 of the calendar year in which such taxable year begins. In the event that the Administrator determines that the reduction percentage elected by an Eligible Employee will result in his exceeding the Code Section 402(g) limit, the Administrator may adjust the reduction authorization of such Eligible Employee by reducing the percentage of his 401(k) Contributions to such smaller percentage that will result in the Code Section 402(g) limit not being exceeded. If the Administrator determines that the 401(k) Contributions made on behalf of an Eligible Employee would exceed the Code Section 402(g) limit for his taxable year, the 401(k) Contributions for such Participant shall be automatically suspended for the remainder, if any, of such taxable year.

If an Employer notifies the Administrator that the Code Section 402(g) limit has nevertheless been exceeded by an Eligible Employee for his taxable year, the 401(k) Contributions that, when aggregated with “elective contributions” made on behalf of the Eligible Employee under any other plan of an Employer or a Related Company, would exceed the Code Section 402(g) limit, plus any income and minus any losses attributable thereto, shall be either re-characterized as Catch-Up 401(k) Contributions or distributed to the Eligible Employee no later than the April 15 immediately following such taxable year.

Any 401(k) Contributions that are distributed to an Eligible Employee in accordance with this Section shall not be taken into account in determining the Eligible Employee’s “deferral percentage” for the “testing year” in which the 401(k) Contributions were made, unless the Eligible Employee is a Highly Compensated Employee.

If excess 401(k) Contributions are distributed to a Participant or are re-characterized as Catch-Up 401(k) Contributions in accordance with this Section, Matching Contributions that are attributable solely to the re-characterized or distributed 401(k) Contributions, plus any income and minus any losses attributable thereto, shall be forfeited by the Participant no earlier than the date on which re-characterization or distribution of 401(k) Contributions pursuant to this Section occurs and no later than the last day of the Plan Year following the Plan Year for which the Matching Contributions were made.

### **7.3 Distribution of “Excess Deferrals”**

Notwithstanding any other provision of the Plan to the contrary, if a Participant notifies the Administrator in writing no later than the March 1 following the close of the Participant’s taxable year that “excess deferrals” have been made on his behalf under the Plan for such taxable year, the “excess deferrals”, plus any income and minus any losses attributable thereto, shall be distributed to the Participant no later than the April 15 immediately following such taxable year.

Any 401(k) Contributions that are distributed to a Participant in accordance with this Section shall nevertheless be taken into account in determining the Participant’s “deferral percentage” for the “testing year” in which the 401(k) Contributions were made.

If 401(k) Contributions are distributed to a Participant in accordance with this Section, Matching Contributions that are attributable solely to the distributed 401(k) Contributions, plus any income and minus any losses attributable thereto, shall be forfeited by the Participant no earlier than the date on which distribution of 401(k) Contributions pursuant to this Section occurs and no later than the last day of the Plan Year following the Plan Year for which the Matching Contributions were made.

### **7.4 Limitation on 401(k) Contributions of Highly Compensated Employees – ADP Test**

Notwithstanding any other provision of the Plan to the contrary, the 401(k) Contributions made with respect to a Plan Year on behalf of Eligible Employees who are Highly Compensated Employees may not result in an average “deferral percentage” for such Eligible Employees that exceeds the greater of:

- (a) a percentage that is equal to 125 percent of the average “deferral percentage” for all other Eligible Employees for the “testing year”; or
- (b) a percentage that is not more than 200 percent of the average “deferral percentage” for all other Eligible Employees for the “testing year” and that is not more than two percentage points higher than the average “deferral percentage” for all other Eligible Employees for the “testing year”,

unless the “excess contributions”, determined as provided in the following Section are re-characterized or distributed as provided in Section 7.6.



If the Plan provides that Employees are eligible to make 401(k) Contributions before they have satisfied the minimum age and service requirements under Code Section 410(a)(1)(A) and applies Code Section 410(b)(4)(B) in determining whether the cash or deferred arrangement meets the requirements of Code Section 410(b)(1), the Administrator may apply the limitations described above either:

- (c) by comparing the average “deferral percentage” of all Eligible Employees who are Highly Compensated Employees for the Plan Year to the average “deferral percentage” for the “testing year” of all other Eligible Employees who have satisfied the minimum age and service requirements under Code Section 410(a)(1)(A); or
- (d) separately with respect to Eligible Employees who have not satisfied the minimum age and service requirements under Code Section 410(a)(1)(A) and Eligible Employees who have satisfied such minimum age and service requirements.

In order to assure that the limitation contained herein is not exceeded with respect to a Plan Year, the Administrator is authorized to set a limit on the percentage of Compensation that a Highly Compensated Employee may contribute to the Plan as 401(k) Contributions for the Plan Year, to suspend completely further 401(k) Contributions on behalf of Highly Compensated Employees for any remaining portion of a Plan Year, or to adjust the projected “deferral percentages” of Highly Compensated Employees by reducing the percentage of their deferral elections for any remaining portion of a Plan Year to such smaller percentage that will result in the limitation set forth above not being exceeded. If the Administrator limits the 401(k) Contributions that may be made by Highly Compensated Employees for a Plan Year, the Administrator shall communicate that limit as soon as reasonably practicable. In the event of a suspension or reduction, Highly Compensated Employees affected thereby shall be notified of the reduction or suspension as soon as possible. An affected Highly Compensated Employee shall be entitled to make a new election for the following Plan Year.

In determining the “deferral percentage” for any Eligible Employee who is a Highly Compensated Employee for the Plan Year, “elective 401(k) contributions”, “qualified nonelective contributions”, and “qualified matching contributions” (to the extent that “qualified nonelective contributions” and “qualified matching contributions” are taken into account in determining “deferral percentages”) made to his accounts under any plan of an Employer or a Related Company that is not mandatorily disaggregated pursuant to Treasury Regulations Section 1.410(b)-7(c), as modified by Section 1.401(k)-1(b)(4) (without regard to the prohibition on aggregating plans with inconsistent testing methods contained in Section 1.401(k)-1(b)(4)(iii)(B) and the prohibition on aggregating plans with different plan years contained in Section 1.410(b)-7(d)(5)), shall be treated as if all such contributions were made to the Plan; provided, however, that if such a plan has a plan year different from the Plan Year, any such contributions made to the Highly Compensated Employee’s accounts under the other plan during the Plan Year shall be treated as if such contributions were made to the Plan.

If one or more plans of an Employer or Related Company are aggregated with the Plan for purposes of satisfying the requirements of Code Section 401(a)(4) or 410(b), then “deferral percentages” under the Plan shall be calculated as if the Plan and such one or more other plans were a single plan. Pursuant to Treasury Regulations Section 1.401(k)-1(b)(4)(v), an Employer may elect to calculate “deferral percentages” aggregating ESOP and non-ESOP plans. In addition, an Employer may elect to calculate “deferral percentages” aggregating bargained plans maintained for different bargaining units, provided that such aggregation is done on a reasonable basis and is reasonably consistent from year to year. Plans may be aggregated under this paragraph only if they have the same plan year and utilize the same testing method to satisfy the requirements of Code Section 401(k).

The Administrator shall maintain records sufficient to show that the limitation contained in this Section was not exceeded with respect to any Plan Year and the amount of the “qualified nonelective contributions” and/or “qualified matching contributions” taken into account in determining “deferral percentages” for any Plan Year.

**7.5 Determination and Allocation of “Excess Contributions” Among Highly Compensated Employees**

Notwithstanding any other provision of the Plan to the contrary, in the event that the limitation on 401(k) Contributions described in the preceding Section is exceeded in any Plan Year, the Administrator shall first determine the dollar amount of the excess by reducing the dollar amount of the contributions included in determining the “deferral percentage” of Highly Compensated Employees in order of their “deferral percentages” as follows:

- (a) The highest “deferral percentage(s)” shall be reduced to the greater of (1) the maximum “deferral percentage” that satisfies the limitation on 401(k) Contributions described in the preceding Section or (2) the next highest “deferral percentage”.
- (b) If the limitation on 401(k) Contributions described in the preceding Section would still be exceeded after application of the provisions of paragraph (a), the Administrator shall continue reducing “deferral percentages” of Highly Compensated Employees, continuing with the next highest “deferral percentage”, in the manner provided in paragraph (a) until the limitation on 401(k) Contributions described in the preceding Section is satisfied.

The determination of the amount of “excess contributions” hereunder shall be made after 401(k) Contributions and “excess deferrals” have been re-characterized or distributed pursuant to Sections 7.2 and 7.3, if applicable.

After determining the dollar amount of the “excess contributions” that have been made to the Plan, the Administrator shall then allocate such excess among Highly Compensated Employees in order of the dollar amount of their “deferral percentages” as follows:

- (c) The contributions included in the “deferral percentage(s)” of the Highly Compensated Employee(s) with the largest dollar amount of “deferral percentage” for the Plan Year shall be reduced by the dollar amount of the excess (with such dollar amount being allocated equally among all such Highly Compensated Employees), but not below the dollar amount of the “deferral percentage” of the Highly Compensated Employee(s) with the next highest dollar amount of “deferral percentage” for the Plan Year.
- (d) If the excess has not been fully allocated after application of the provisions of paragraph (c), the Administrator shall continue reducing the contributions included in the “deferral percentages” of Highly Compensated Employees, continuing with the Highly Compensated Employees with the largest remaining dollar amount of “deferral percentages” for the Plan Year, in the manner provided in paragraph (c) until the entire excess determined above has been allocated.

#### **7.6 Treatment of “Excess Contributions”**

Except to the extent that a Highly Compensated Employee’s “excess contributions” may be re-characterized as Catch-Up 401(k) Contributions, “excess contributions” allocated to a Highly Compensated Employee pursuant to the preceding Section, plus any income and minus any losses attributable thereto, shall be distributed to the Highly Compensated Employee prior to the end of the next succeeding Plan Year. If such excess amounts are distributed more than 2 1/2 months after the last day of the Plan Year for which the excess occurred, an excise tax may be imposed under Code Section 4979 on the Employer maintaining the Plan with respect to such amounts.

If excess 401(k) Contributions are distributed to a Participant or are re-characterized as Catch-Up 401(k) Contributions in accordance with this Section, Matching Contributions that are attributable solely to the re-characterized or distributed 401(k) Contributions, plus any income and minus any losses attributable thereto, shall be forfeited by the Participant no earlier than the date on which re-characterization or distribution of 401(k) Contributions pursuant to this Section occurs and no later than the last day of the Plan Year following the Plan Year for which the Matching Contributions were made

#### **7.7 Limitation on Contributions of Highly Compensated Employees – ACP Test**

Notwithstanding any other provision of the Plan to the contrary, the Matching Contributions made with respect to a Plan Year on behalf of “eligible participants” who are Highly Compensated Employees may not result in an average “contribution percentage” for such “eligible participants” that exceeds the greater of:

- (a) a percentage that is equal to 125 percent of the average “contribution percentage” for all other “eligible participants” for the “testing year”; or
- (b) a percentage that is not more than 200 percent of the average “contribution percentage” for all other “eligible participants” for the “testing year” and that is not more than two percentage points higher than the average “contribution percentage” for all other “eligible participants” for the “testing year”;

unless the “excess aggregate contributions”, determined as provided in the following Section are forfeited or distributed as provided in Section 7.8.

If the Plan provides that Employees are eligible to receive Matching Contributions before they have satisfied the minimum age and service requirements under Code Section 410(a)(1)(A) and applies Code Section 410(b)(4)(B) in determining whether the portion of the Plan subject to Code Section 401(m) meets the requirements of Code Section 410(b)(1), the Administrator may apply the limitations described above either:

- (c) by comparing the average “contribution percentage” of all “eligible participants” who are Highly Compensated Employees for the Plan Year to the average “contribution percentage” for the “testing year” of all other “eligible participants” who have satisfied the minimum age and service requirements under Code Section 410(a)(1)(A); or
- (d) separately with respect to “eligible participants” who have not satisfied the minimum age and service requirements under Code Section 410(a)(1)(A) and “eligible participants” who have satisfied such minimum age and service requirements.

In determining the “contribution percentage” for any “eligible participant” who is a Highly Compensated Employee for the Plan Year, “matching contributions”, “employee contributions”, “qualified nonelective contributions”, and “elective 401(k) contributions” (to the extent that “qualified nonelective contributions” and “elective 401(k) contributions” are taken into account in determining “contribution percentages”) made to his accounts under any plan of an Employer or a Related Company that is not mandatorily disaggregated pursuant to Treasury Regulations Section 1.410(b)-7(c), as modified by Section 1.401(m)-1(b)(4) (without regard to the prohibition on aggregating plans with inconsistent testing methods contained in Section 1.401(m)-1(b)(4)(iii)(B) and the prohibition on aggregating plans with different plan years contained in Section 1.410(b)-7(d)(5)), shall be treated as if all such contributions were made to the Plan; provided, however, that if such a plan has a plan year different from the Plan Year, any such contributions made to the Highly Compensated Employee’s accounts under the other plan during the Plan Year shall be treated as if such contributions were made to the Plan.

If one or more plans of an Employer or a Related Company are aggregated with the Plan for purposes of satisfying the requirements of Code Section 401(a)(4) or 410(b), the “contribution percentages” under the Plan shall be calculated as if the Plan and such one or more other plans were a single plan. Pursuant to Treasury Regulations Section 1.401(m)-1(b)(4)(v), an Employer may elect to calculate “contribution percentages” aggregating ESOP and non-ESOP plans. In addition, an Employer may elect to calculate “contribution percentages” aggregating bargained plans maintained for different bargaining units, provided that such aggregation is done on a reasonable basis and is reasonably consistent from year to year. Plans may be aggregated under this paragraph only if they have the same plan year and utilize the same testing method to satisfy the requirements of Code Section 401(m).

The Administrator shall maintain records sufficient to show that the limitation contained in this Section was not exceeded with respect to any Plan Year and the amount of the “elective 401(k) contributions”, “qualified nonelective contributions”, and/or “qualified matching contributions” taken into account in determining “contribution percentages” for any Plan Year.

#### **7.8 Determination and Allocation of Excess Aggregate Contributions Among Highly Compensated Employees**

Notwithstanding any other provision of the Plan to the contrary, in the event that the limitation described in the preceding Section is exceeded in any Plan Year, the Administrator shall first determine the dollar amount of the excess by reducing the dollar amount of the contributions included in determining the “contribution percentage” of Highly Compensated Employees in order of their “contribution percentages”, as follows:

- (a) The highest “contribution percentage(s)” shall be reduced to the greater of (1) the maximum “contribution percentage” that satisfies the limitation described in the preceding Section or (2) the next highest “contribution percentage”.
- (b) If the limitation described in the preceding Section would still be exceeded after application of the provisions of paragraph (a), the Administrator shall continue reducing “contribution percentages” of Highly Compensated Employees, continuing with the next highest “contribution percentage”, in the manner provided in paragraph (a) until the limitation described in the preceding Section is satisfied.

The determination of the amount of the “excess aggregate contributions” shall be made after application of Sections 7.2, 7.3, and 7.6, if applicable.

After determining the dollar amount of the “excess aggregate contributions” that have been made to the Plan, the Administrator shall next allocate such excess among Highly Compensated Employees in order of the dollar amount of their “contribution percentages” as follows:

- (c) The contributions included in the “contribution percentages” of the Highly Compensated Employee(s) with the largest dollar amount of “contribution percentage” shall be reduced by the dollar amount of the excess (with such dollar amount being allocated equally among all such Highly Compensated Employees), but not below the dollar amount of the “contribution percentage” of the Highly Compensated Employee(s) with the next highest dollar amount of “contribution percentage” for the Plan Year.

- (d) If the excess has not been fully allocated after application of the provisions of paragraph (c), the Administrator shall continue reducing the contributions included in the “contribution percentages” of Highly Compensated Employees, continuing with the Highly Compensated Employees with the largest remaining dollar amount of “contribution percentages” for the Plan Year, in the manner provided in paragraph (c) until the entire excess determined above has been allocated.

#### **7.9 Treatment of “Excess Aggregate Contributions”**

“Excess aggregate contributions” allocated to a Highly Compensated Employee pursuant to the preceding Section, plus any income and minus any losses attributable thereto, shall be forfeited, to the extent forfeitable, or distributed to the Participant prior to the end of the next succeeding Plan Year as hereinafter provided. If such excess amounts are forfeited or distributed more than 2 1/2 months after the last day of the Plan Year for which the excess occurred, an excise tax of 10% will be imposed under Code Section 4979 on the Employer maintaining the Plan with respect to such amounts.

Excess amounts shall be forfeited or distributed from a Highly Compensated Employee’s Account in the order prescribed by the Administrator, which order shall be uniform with respect to all Highly Compensated Employees and non-discriminatory.

“Excess aggregate contributions” that are vested shall in all cases be distributed. Excess Matching Contributions that are not vested shall be forfeited. Any amounts forfeited with respect to a Participant pursuant to this Section shall be treated as a forfeiture under the Plan no later than the last day of the Plan Year following the Plan Year for which the Matching Contributions were made.

#### **7.10 Treatment of Forfeited Matching Contributions**

Any Matching Contributions that are forfeited pursuant to the provisions of the preceding Sections of this Article shall be applied against the Employers’ contribution obligations for the Plan Year or against Plan expenses, as directed by the Administrator.

Notwithstanding the foregoing, however, should the amount of all such forfeitures for any Plan Year exceed the amount of the Employers' contribution obligations for the Plan Year, the excess amount of such forfeitures shall be allocated among the Accounts of Participants who are Eligible Employees during the Plan Year for which the excess occurred as follows:

- (a) Forfeited Matching Contributions shall be allocated only among Eligible Employees who are not Highly Compensated Employees for the Plan Year;
- (b) Any forfeited amounts shall be allocated in the ratio which the "deferral percentage" of an eligible Participant bears to the aggregate value of the "deferral percentages of all such eligible Participants; and
- (c) Forfeitures credited to a Participant's Account hereunder shall be credited to his Regular Matching Contributions Sub-Account. A Participant's vested interest in amounts attributable to forfeitures allocated to his Matching Contributions Sub-Account hereunder shall be determined under the vesting schedule applicable to Regular Matching Contributions.

Notwithstanding the foregoing, prior to allocating forfeited amounts among Participants' Accounts, the Administrator may direct that any portion or all of such forfeited amounts shall be applied against Plan expenses. The forfeited amounts to be allocated among Participants' Accounts shall be reduced by any such amounts that are applied against Plan expenses as provided herein.

#### **7.11 Determination of Income or Loss**

The income or loss attributable to contributions in excess of a limit described above that are distributed pursuant to this Article shall be determined for the preceding Plan Year and the "gap period" under the method otherwise used for allocating income or loss to Participants' Accounts; provided, however, that income or loss for the "gap period" may be determined as of a date that is no more than 7 days before the date of distribution.

#### **7.12 Code Section 415 Limitations on Crediting of Contributions and Forfeitures**

Notwithstanding any other provision of the Plan to the contrary, the "annual addition" with respect to a Participant for a "limitation year" shall in no event exceed the lesser of (i) the maximum dollar amount permitted under Code Section 415(c)(1)(A), adjusted as provided in Code Section 415(d) (e.g., \$42,000 for the "limitation year" ending in 2005) or (ii) 100 percent of the Participant's "415 compensation" for the "limitation year"; provided, however, that the limit in clause (i) shall be pro rated for any short "limitation year". The limit in clause (ii) shall not apply to any contribution for medical benefits within the meaning of Code Section 401(h) or 419A(f)(2) after separation from service which is otherwise treated as an "annual addition" under Code Section 419A(d)(2) or 415(l)(1). A Participant's 401(k) Contributions may be re-characterized as Catch-Up 401(k) Contributions and excluded from the Participant's "annual additions" for the "limitation year" to satisfy the preceding limitation.

If the “annual addition” to the Account of a Participant in any “limitation year” would otherwise exceed the amount that may be applied for his benefit under the limitation contained in this Section, the limitation shall be satisfied by reducing contributions made to the Participant’s Account to the extent necessary in the following order:

401(k) Contributions made on behalf of the Participant for the “limitation year” that have not been matched, if any, shall be reduced.

401(k) Contributions made on behalf of the Participant for the “limitation year” that have been matched, if any, and the Matching Contributions attributable thereto shall be reduced pro rata.

Nonelective Contributions otherwise allocable to the Participant’s Account for the “limitation year”, if any, shall be reduced.

The amount of any reduction of 401(k) Contributions (plus any income attributable thereto) shall be returned to the Participant. The amount of any reduction of Employer Contributions shall be deemed a forfeiture for the “limitation year”.

Amounts deemed to be forfeitures under this Section shall be held unallocated in a suspense account established for the “limitation year” and shall be applied against the Employer’s contribution obligation for the next following “limitation year” (and succeeding “limitation years”, as necessary). If a suspense account is in existence at any time during a “limitation year”, all amounts in the suspense account must be applied against the Employer’s contribution obligation before any further contributions that would constitute “annual additions” may be made to the Plan. No suspense account established hereunder shall share in any increase or decrease in the net worth of the Trust.

For purposes of this Article, excesses shall result only from the allocation of forfeitures, a reasonable error in estimating a Participant’s annual “415 compensation”, a reasonable error in determining the amount of “elective contributions” that may be made with respect to any Participant under the limits of Code Section 415, or other limited facts and circumstances that justify the availability of the provisions set forth above.

### **7.13 Application of Code Section 415 Limitations Where Participant is Covered Under Other Qualified Defined Contribution Plan**

If a Participant is covered by any other qualified defined contribution plan (whether or not terminated) maintained by an Employer or a Related Company concurrently with the Plan, and if the “annual addition” for the “limitation year” would otherwise exceed the amount that may be applied for the Participant’s benefit under the limitation contained in the preceding Section, such excess shall be reduced first by returning or forfeiting, as provided under the applicable defined contribution plan, the contributions last allocated to the Participant’s accounts for the limitation year under all such defined contribution plans, and, to the extent such contributions are returned to the Participant, the income attributable thereto. If contributions are allocated to the defined contribution plans as of the same date, any excess shall be allocated pro rata among the defined contribution plans. For purposes of determining the order of reduction hereunder, contributions to a simplified employee pension plan described in Code Section 408(k) shall be deemed to have been allocated first and contributions to a welfare benefit fund or individual medical account shall be deemed to have been allocated next, regardless of the date such contributions were actually allocated.



#### **7.14 Scope of Limitations**

The Code Section 415 limitations contained in the preceding Sections shall be applicable only with respect to benefits provided pursuant to defined contribution plans and defined benefit plans described in Code Section 415(k). For purposes of applying the Code Section 415 limitations contained in the preceding Sections, the term "Related Company" shall be adjusted as provided in Code Section 415(h).

**ARTICLE VIII  
TRUST FUNDS AND ACCOUNTS**

**8.1 General Fund**

The Trustee shall maintain a General Fund as required to hold and administer any assets of the Trust that are not allocated among the Investment Funds as provided in the Plan or the Trust Agreement. The General Fund shall be held and administered as a separate common trust fund. The interest of each Participant or Beneficiary under the Plan in the General Fund shall be an undivided interest.

**8.2 Investment Funds**

The Sponsor shall determine the number and type of Investment Funds and shall communicate the same and any changes therein in writing to the Administrator and the Trustee. Each Investment Fund shall be held and administered as a separate common trust fund. The interest of each Participant or Beneficiary under the Plan in any Investment Fund shall be an undivided interest.

**8.3 Loan Investment Fund**

If a loan from the Plan to a Participant is approved in accordance with the provisions of Article XII, the Sponsor shall direct the establishment and maintenance of a loan Investment Fund in the Participant's name. The assets of the loan Investment Fund shall be held as a separate trust fund. A Participant's loan Investment Fund shall be invested in the note(s) reflecting the loan(s) made to the Participant in accordance with the provisions of Article XII. Notwithstanding any other provision of the Plan to the contrary, income received with respect to a Participant's loan Investment Fund shall be allocated and the loan Investment Fund shall be administered as provided in Article XII.

**8.4 Employer Stock Investment Fund**

The Sponsor shall direct the establishment and maintenance of an Employer stock Investment Fund to which the following contributions shall be allocated:

- Nonelective Contributions.
- Matching Contributions.

In addition to the foregoing, a Participant may elect to have other contributions invested in the Employer stock Investment Fund. The Employer stock Investment Fund shall be held and administered as a separate common trust fund. The interest of each Participant or Beneficiary under the Plan in the Employer stock Investment Fund shall be an undivided interest. The Employer stock Investment Fund is intended to be invested primarily in equity securities issued by an Employer or a Related Company that are publicly traded and are "qualifying employer securities" as defined in ERISA Section 407(d)(5).

### **8.5 Income on Trust**

Any dividends, interest, distributions, or other income received by the Trustee with respect to any Trust Fund maintained hereunder shall be allocated by the Trustee to the Trust Fund for which the income was received.

### **8.6 Accounts**

As of the first date a contribution is made by or on behalf of a Covered Employee there shall be established an Account in his name reflecting his interest in the Trust. Each Account shall be maintained and administered for each Participant and Beneficiary in accordance with the provisions of the Plan. The balance of each Account shall be the balance of the account after all credits and charges thereto, for and as of such date, have been made as provided herein.

### **8.7 Sub-Accounts**

A Participant's Account shall be divided into such separate, individual Sub-Accounts as are necessary or appropriate to reflect the Participant's interest in the Trust.

**ARTICLE IX  
LIFE INSURANCE CONTRACTS**

**9.1 No Life Insurance Contracts**

A Participant's Account may not be invested in life insurance contracts on the life of the Participant.

**ARTICLE X  
DEPOSIT AND INVESTMENT OF CONTRIBUTIONS**

**10.1 Future Contribution Investment Elections**

Except as otherwise provided below, each Eligible Employee shall make an investment election in the manner and form prescribed by the Administrator directing the manner in which the contributions made on his behalf shall be invested. An Eligible Employee's investment election shall specify the percentage, in the percentage increments prescribed by the Administrator, of such contributions that shall be allocated to one or more of the Investment Funds with the sum of such percentages equaling 100 percent. The investment election by a Participant shall remain in effect until his entire interest under the Plan is distributed or forfeited in accordance with the provisions of the Plan or until he records a change of investment election with the Administrator, in such form as the Administrator shall prescribe. If recorded in accordance with any rules prescribed by the Administrator, a Participant's change of investment election may be implemented effective as of the date or dates prescribed by the Administrator.

**10.2 Deposit of Participant Directed Contributions**

All contributions made on a Participant's behalf over which the Participant has investment control shall be deposited in the Trust and allocated among the Investment Funds including the Employer stock Investment Fund in accordance with the Participant's currently effective investment election. Notwithstanding the foregoing, any contributions made to the Plan in qualifying employer securities shall be allocated to the Employer stock Investment Fund, pending directions to the Administrator regarding their future investment. If no investment election is recorded with the Administrator at the time contributions are to be deposited to a Participant's Account, his contributions shall be allocated among the Investment Funds as directed by the Administrator.

**10.3 Investment and Deposit of Certain Contributions**

Notwithstanding any other provision of the Plan to the contrary, the following contributions are required to be invested in the Employer stock Investment Fund, pending a Participant's election to transfer them to another Investment Fund:

- Nonelective Contributions.
- Matching Contributions.

Upon contribution to the Plan, all such contributions shall be deposited in the Trust and allocated to the Employer stock Investment Fund.

#### **10.4 Election to Transfer Between Funds**

A Participant may elect to transfer investments of amounts attributable to contributions over which he has investment control from any Investment Fund to any other Investment Fund. The Participant's transfer election shall specify a percentage, in the percentage increments prescribed by the Administrator, of the amount eligible for transfer that is to be transferred, which percentage may not exceed 100 percent. Any transfer election must be recorded with the Administrator, in such form as the Administrator shall prescribe. Subject to any restrictions pertaining to a particular Investment Fund, if recorded in accordance with any rules prescribed by the Administrator, a Participant's transfer election may be implemented effective as of the date or dates prescribed by the Administrator.

Notwithstanding any other provision of this Section to the contrary, the Administrator may prescribe such rules restricting Participants' transfer elections as it deems necessary or appropriate to preclude excessive or abusive trading or market timing.

#### **10.5 404(c) Protection**

The Plan is intended to constitute a plan described in ERISA Section 404(c) and regulations issued thereunder. The fiduciaries of the Plan may be relieved of liability for any losses that are the direct and necessary result of investment instructions given by a Participant, his Beneficiary, or an alternate payee under a qualified domestic relations order.

A Participant's directions to the Trustee regarding investment in and transfers to and from the Employer stock Investment Fund shall be communicated in confidence and shall not be divulged to the Employers or to any officer, director, or employee of the Employers. The Sponsor shall establish procedures to provide and maintain such confidentiality and shall appoint a fiduciary with the responsibility of overseeing such procedures. An independent fiduciary shall be appointed to the extent required under Department of Labor Regulations Section 2550.404c-1(d)(2)(ii)(E)(4)(ix) to maintain such confidentiality.

#### **10.6 Voting and Tendering Employer Stock**

Each Participant who has an interest in the Employer stock Investment Fund shall have the right to direct the Trustee as to the manner in which the number of shares credited to his Account or, if accounting under the Employer stock Investment Fund is by units of participation, his proportionate interest in the Employer stock Investment Fund, is to be voted. Upon receipt of a Participant's direction, the Trustee shall vote the shares representing the Participant's interest in the Employer stock Investment Fund as directed. Except as otherwise required by law or as otherwise provided in the Trust Agreement, if the Trustee does not receive direction from a Participant regarding how to vote the shares representing his interest in the Employer stock Investment Fund, the Trustee shall vote such shares in accordance with the recommendations of the board of directors of the Sponsor.

In addition, upon commencement of a tender offer for any securities held in the Employer stock Investment Fund, each Participant who has an interest in the Employer stock Investment Fund shall have the right to direct the Trustee whether or not to tender all or any portion of the shares credited to his Account or, if accounting under the Employer stock Investment Fund is by units of participation, all or any portion of his proportionate interest in the Employer stock Investment Fund. A Participant may change his direction regarding the tender of shares representing his interest in the Employer stock Investment Fund at any time prior to the tender offer withdrawal deadline. The Trustee shall tender or not tender shares representing a Participant's interest in the Employer stock Investment Fund in accordance with the Participant's directions. Except as otherwise required by law, if the Trustee does not receive direction from a Participant regarding whether or not to tender the shares representing a Participant's interest in the Employer stock Investment Fund, the Trustee shall not tender such shares. The proceeds received by the Trustee with respect to shares of stock tendered by the Trustee in accordance with Participants' directions shall be allocated to the Accounts of those Participants who elected to tender their shares in proportion to their interest in the tendered shares.

All materials provided to other shareholders, including proxy solicitation materials and all tender materials, shall be provided to each Participant with an interest in the Employer stock Investment Fund.

A Participant's directions to the Trustee hereunder shall be communicated in confidence and shall not be divulged to the Employers or to any officer, director, or employee of the Employers. The Sponsor shall establish procedures to provide and maintain such confidentiality and shall appoint a fiduciary with the responsibility of overseeing such procedures. An independent fiduciary shall be appointed to the extent required under Department of Labor Regulations Section 2550.404c-1(d)(2)(ii)(E)(4)(ix) to maintain such confidentiality.

**ARTICLE XI  
CREDITING AND VALUING ACCOUNTS**

**11.1 Crediting Accounts**

All contributions made under the provisions of the Plan shall be credited to Accounts in the Trust Funds by the Trustee, in accordance with procedures established in writing by the Administrator, either when received or on the succeeding Valuation Date after valuation of the Trust Fund has been completed for such Valuation Date as provided in Section 11.2, as shall be determined by the Administrator.

**11.2 Valuing Accounts**

Accounts in the Trust Funds shall be valued by the Trustee on the Valuation Date, in accordance with procedures established in writing by the Administrator, either in the manner adopted by the Trustee and approved by the Administrator or in the manner set forth in Section 11.3 as Plan valuation procedures, as determined by the Administrator.

**11.3 Plan Valuation Procedures**

With respect to the Trust Funds, the Administrator may determine that the following valuation procedures shall be applied. As of each Valuation Date hereunder, the portion of any Accounts in a Trust Fund shall be adjusted to reflect any increase or decrease in the value of the Trust Fund for the period of time occurring since the immediately preceding Valuation Date for the Trust Fund (the "valuation period") in the following manner:

- (a) First, the value of the Trust Fund shall be determined by valuing all of the assets of the Trust Fund at fair market value.
- (b) Next, the net increase or decrease in the value of the Trust Fund attributable to net income and all profits and losses, realized and unrealized, during the valuation period shall be determined on the basis of the valuation under paragraph (a) taking into account appropriate adjustments for contributions, loan payments, and transfers to and distributions, withdrawals, loans, and transfers from such Trust Fund during the valuation period.
- (c) Finally, the net increase or decrease in the value of the Trust Fund shall be allocated among Accounts in the Trust Fund in the ratio of the balance of the portion of such Account in the Trust Fund as of the preceding Valuation Date less any distributions, withdrawals, loans, and transfers from such Account balance in the Trust Fund since the Valuation Date to the aggregate balances of the portions of all Accounts in the Trust Fund similarly adjusted, and each Account in the Trust Fund shall be credited or charged with the amount of its allocated share.

Notwithstanding the foregoing, the Administrator may adopt such accounting procedures as it considers appropriate and equitable to establish a proportionate crediting of net increase or decrease in the value of the Trust Fund for contributions, loan payments, and transfers to and distributions, withdrawals, loans, and transfers from such Trust Fund made by or on behalf of a Participant during the valuation period.



**11.4 Unit Accounting Permitted**

The Administrator may, for administrative purposes, establish unit values for one or more Investment Fund (or any portion thereof) and maintain the accounts setting forth each Participant's interest in such Investment Fund (or any portion thereof) in terms of such units, all in accordance with such rules and procedures as the Administrator shall deem to be fair, equitable, and administratively practicable. In the event that unit accounting is established for an Investment Fund (or any portion thereof), the value of a Participant's interest in that Investment Fund (or any portion thereof) at any time shall be an amount equal to the then value of a unit in such Investment Fund (or any portion thereof) multiplied by the number of units then credited to the Participant.

**11.5 Finality of Determinations**

The Trustee shall have exclusive responsibility for determining the value of each Account maintained hereunder. The Trustee's determinations thereof shall be conclusive upon all interested parties.

**11.6 Notification**

Within a reasonable period of time after the end of each Plan Year, the Administrator shall notify each Participant and Beneficiary of the value of his Account and Sub-Accounts as of a Valuation Date during the Plan Year.

**ARTICLE XII  
LOANS**

**12.1 Application for Loan**

A Participant who is a party in interest as defined in ERISA Section 3(14) may make application to the Administrator for a loan from his Account. Loans shall be made to Participants in accordance with written guidelines which are hereby incorporated into and made a part of the Plan. To the extent that such written guidelines comply with the requirements of Code Section 72(p), but are inconsistent with the provisions of this Article, such written guidelines shall be given effect.

**12.2 Collateral for Loan**

As collateral for any loan granted hereunder, the Participant shall grant to the Plan a security interest in his vested interest under the Plan equal to the amount of the loan; provided that in no event may the security interest exceed 50 percent of the Participant's vested interest under the Plan determined as of the date as of which the loan is originated in accordance with Plan provisions. In the case of a Participant who is an active employee, the Participant also shall enter into an agreement to repay the loan by payroll withholding.

No loan in excess of 50 percent of the Participant's vested interest under the Plan shall be made from the Plan.

Loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other employees.

A loan shall not be granted unless the Participant consents to the charging of his Account for unpaid principal and interest amounts in the event the loan is declared to be in default.

**12.3 Reduction of Account Upon Distribution**

Notwithstanding any other provision of the Plan, the amount of a Participant's Account that is distributable to the Participant or his Beneficiary under Article XIII or XV shall be reduced by the portion of his vested interest that is held by the Plan as security for any loan outstanding to the Participant, provided that the reduction is used to repay the loan. If distribution is made because of the Participant's death prior to the commencement of distribution of his Account and the Participant's vested interest in his Account is payable to more than one individual as Beneficiary, then the balance of the Participant's vested interest in his Account shall be adjusted by reducing the vested account balance by the amount of the security used to repay the loan, as provided in the preceding sentence, prior to determining the amount of the benefit payable to each such individual.

#### 12.4 Legal Requirements Applicable to Plan Loans

Notwithstanding any other provision of the Plan to the contrary, the following terms and conditions shall apply to any loan made to a Participant under this Article:

- (a) The amount of any loan to a Participant (when added to the outstanding balance of all other loans to the Participant from the Plan or any other plan maintained by an Employer or a Related Company) shall not exceed the lesser of:
  - (i) \$50,000, reduced by the excess, if any, of the highest outstanding balance of any other loan to the Participant from the Plan or any other plan maintained by an Employer or a Related Company during the preceding 12-month period over the outstanding balance of such loans on the date a loan is made hereunder; or
  - (ii) 50 percent of the vested portions of the Participant's Account and his vested interest under all other plans maintained by an Employer or a Related Company.
- (b) The term of any loan to a Participant shall be no greater than 5 years, except in the case of a loan used to acquire any dwelling unit which within a reasonable period of time is to be used (determined at the time the loan is made) as a principal residence (as defined under Code Section 121) of the Participant.
- (c) Substantially level amortization shall be required over the term of the loan with payments made not less frequently than quarterly. Notwithstanding the foregoing, if so provided in the written guidelines applicable to Plan loans, the amortization schedule may be waived and payments suspended while a Participant is on a leave of absence from employment with an Employer or any Related Company (for periods in which the Participant does not perform military service as described in paragraph (d) below); provided that all of the following requirements are met:
  - (i) Such leave is either without pay or at a reduced rate of pay that, after withholding for employment and income taxes, is less than the amount required to be paid under the amortization schedule;
  - (ii) Payments resume after the earlier of (a) the date such leave of absence ends or (b) the one-year anniversary of the date such leave began;
  - (iii) The period during which payments are suspended does not exceed one year;
  - (iv) Payments resume in an amount not less than the amount required under the original amortization schedule; and
  - (v) The waiver of the amortization schedule does not extend the period of the loan beyond the maximum period permitted under this Article.

- (d) If a Participant is absent from employment with any Employer or any Related Company for a period during which he performs services in the uniformed services (as defined in chapter 45 of title 38 of the United States Code), whether or not such services constitute qualified military service, the suspension of payments shall not be taken into account for purposes of applying either paragraph (b) or paragraph (c) of this Section provided that all of the following requirements are met:
  - (i) Payments resume upon completion of such military service;
  - (ii) Payments resume in an amount not less than the amount required under the original amortization schedule and continue in such amount until the loan is repaid in full;
  - (iii) Upon resumption, payments are made no less frequently than required under the original amortization schedule and continue under such schedule until the loan is repaid in full; and
  - (iv) The loan is repaid in full, including interest accrued during the period of such military service, no later than the maximum period otherwise permitted under this Article extended by the period of such military service.
- (e) The loan shall be evidenced by a legally enforceable agreement that demonstrates compliance with the provisions of this Section.
- (f) Subject to the requirements of the Servicemembers Civil Relief Act, the interest rate on any loan to a Participant shall be the prime interest rate made under similar circumstances by persons in the business of lending money plus one percent.

#### **12.5 Administration of Loan Investment Fund**

Upon approval of a loan to a Participant, the Administrator shall direct the Trustee to transfer an amount equal to the loan amount from the Investment Funds in which it is invested, as directed by the Administrator, to the loan Investment Fund established in the Participant's name. Any loan approved by the Administrator shall be made to the Participant out of the Participant's loan Investment Fund. All principal and interest paid by the Participant on a loan made under this Article shall be deposited to his Account and shall be allocated upon receipt among the Investment Funds in accordance with the Participant's currently effective investment election. The balance of the Participant's loan Investment Fund shall be decreased by the amount of principal payments and the loan Investment Fund shall be terminated when the loan has been repaid in full.

## **12.6 Default**

If either (i) a Participant fails to make or cause to be made, any payment required under the terms of the loan by the end of the calendar quarter following the calendar quarter in which the payment was due, unless payment is not made because the Participant is on a leave of absence and the amortization schedule is waived as provided in paragraph (c) or (d) of Section 12.4, or (ii) there is an outstanding principal balance existing on a loan after the last scheduled repayment date (extended as provided in Section 12.4(d), if applicable), the Administrator shall direct the Trustee to declare the loan to be in default, and the entire unpaid balance of such loan, together with accrued interest, shall be immediately due and payable. In any such event, if such balance and interest thereon is not then paid, the Trustee shall charge the Account of the borrower with the amount of such balance and interest as of the earliest date a distribution may be made from the Plan to the borrower without adversely affecting the tax qualification of the Plan or of the cash or deferred arrangement.

## **12.7 Deemed Distribution Under Code Section 72(p)**

If a Participant's loan is in default as provided in Section 12.6, the Participant shall be deemed to have received a taxable distribution in the amount of the outstanding loan balance as required under Code Section 72(p), whether or not distribution may actually be made from the Plan without adversely affecting the tax qualification of the Plan.

If a Participant is deemed to have received distribution of an outstanding loan balance hereunder, no further loans may be made to such Participant from his Account unless either (a) there is a legally enforceable arrangement among the Participant, the Plan, and the Participant's employer that repayment of such loan shall be made by payroll withholding or (b) the loan is secured by such additional collateral consisting of real, personal, or other property satisfactory to the Administrator to provide adequate security for the loan.

## **12.8 Treatment of Outstanding Balance of Loan Deemed Distributed Under Code Section 72(p)**

The balance of any loan that is deemed to have been distributed to a Participant hereunder shall cease to be an outstanding loan for purposes of Code Section 72(p) and a Participant shall not be treated as having received a taxable distribution when his Account is offset by such outstanding loan balance as provided in Section 12.6. Any interest that accrues on a loan after it is deemed to have been distributed shall not be treated as an additional loan to the Participant and shall not be included in the Participant's taxable income as a deemed distribution. Notwithstanding the foregoing, however, unless a Participant repays such loan, with interest, the amount of such loan, with interest thereon calculated as provided in the original loan note, shall continue to be considered an outstanding loan for purposes of determining the maximum permissible amount of any subsequent loan under Section 12.4(a).

If a Participant elects to make payments on a loan after it is deemed to have been distributed hereunder, such payments shall be treated as "employee contributions", as defined in Section 7.1, to the Plan solely for purposes of determining the taxable portion of the Participant's Account and shall not be treated as "employee contributions" for any other Plan purpose, including application of the limitations on contributions applicable under Code Sections 401(m) and 415.

The provisions of this Section regarding treatment of loans that are deemed distributed shall not apply to loans made prior to January 1, 2002, except to the extent provided under the transition rules in Q & A 22(c)(2) of Section 1.72(p)-1 of the Treasury Regulations.

### **12.9 Special Rules Applicable to Loans**

Any loan made hereunder shall be subject to the following rules:

- (a) No loans shall be made to an Employee who makes a Rollover Contribution in accordance with Article V, but who is not an Eligible Employee as provided in Article III.
- (b) A Participant may not request a loan for less than \$1,000.
- (c) A Participant with an outstanding loan may not apply for another loan until the existing loan is paid in full and may not refinance an existing loan or obtain a second loan for the purpose of paying off the existing loan. The provisions of this paragraph shall not apply to any loans made prior to the effective date of this amendment and restatement or made under the provisions of a prior plan before the date such plan was merged into the Plan or; provided, however, that any such loan shall be taken into account in determining whether a Participant may apply for a new loan hereunder.
- (d) The term of any loan to a Participant that is used to acquire any dwelling unit which within a reasonable period of time is to be used (determined at the time the loan is made) as a principal residence (as defined under Code Section 121) of the Participant shall be no greater than ten years.
- (e) A Participant may pre-pay the full outstanding balance of any loan hereunder prior to the date it is due without penalty.
- (f) Upon a Participant's termination of employment, the balance of any outstanding loan hereunder shall immediately become due and owing.
- (g) A Participant may not elect to roll over any loan note held pursuant to the provisions of this Article.

**12.10 Prior Loans**

Notwithstanding any other provision of this Article to the contrary, any loan made under the provisions of the Plan as in effect prior to this amendment and restatement or made under the provisions of a prior plan before the date such plan was merged into the Plan shall be administered in accordance with the provisions of the note reflecting such loan and shall remain outstanding until repaid in accordance with its terms.

**ARTICLE XIII  
WITHDRAWALS WHILE EMPLOYED**

**13.1 Non-Hardship Withdrawals of Rollover Contributions**

A Participant who is employed by an Employer or a Related Company may elect at any time, subject to the limitations and conditions prescribed in this Article, to make a cash withdrawal from his Rollover Contributions Sub-Account.

**13.2 Non-Hardship Withdrawals of Restricted Contributions**

A Participant who is employed by an Employer or a Related Company and who has attained age 59 1/2 may elect, subject to the limitations and conditions prescribed in this Article, to make a cash withdrawal from his vested interest in any of the following Sub-Accounts:

- his 401(k) Contributions Sub-Account.

**13.3 Non-Hardship Withdrawals of Nonelective Contributions**

A Participant who is employed by an Employer or a Related Company may elect, subject to the limitations and conditions prescribed in this Article, to make a cash withdrawal of amounts held in his Nonelective Contributions Sub-Account if he has attained age 59 1/2.

**13.4 Non-Hardship Withdrawals of Matching Contributions**

A Participant who is employed by an Employer or a Related Company may elect, subject to the limitations and conditions prescribed in this Article, to make a cash withdrawal of amounts held in his Regular, Additional Discretionary, and True Up Matching Contributions Sub-Accounts if he has attained age 59 1/2.

**13.5 Special In-Service Withdrawals While On Military Leave**

A Participant who is employed by an Employer or a Related Company and who is absent from employment because of qualified military service as described in Code Section 414(u) may elect, subject to the limitations and conditions prescribed in this Article, to make a cash withdrawal of all or a portion of his vested interest in his Account.

Notwithstanding the foregoing, a Participant may not make an in-service withdrawal from the following Sub-Accounts unless the Participant has attained age 59 1/2 or incurred a hardship, as defined below:

- his 401(k) Contributions Sub-Account.



### **13.6 Overall Limitations on Non-Hardship Withdrawals**

Non-hardship withdrawals made pursuant to this Article shall be subject to the following conditions and limitations:

- (a) A Participant must apply for a non-hardship withdrawal such number of days prior to the date as of which it is to be effective as the Administrator may prescribe.
- (b) Non-hardship withdrawals may be made effective as soon as administratively practicable after the Administrator's approval of the Participant's withdrawal application.

### **13.7 Hardship Withdrawals**

A Participant who is employed by an Employer or a Related Company and who is determined by the Administrator to have incurred a hardship in accordance with the provisions of this Article may elect, subject to the limitations and conditions prescribed in this Article, to make a cash withdrawal from his vested interest in any of the following Sub-Accounts:

- his 401(k) Contributions Sub-Account, excluding any income credited to such Sub-Account.

### **13.8 Hardship Determination**

The Administrator shall grant a hardship withdrawal only if it determines that the withdrawal is necessary to meet an immediate and heavy financial need of the Participant. An immediate and heavy financial need of the Participant means a financial need on account of:

- (a) expenses previously incurred by or necessary to obtain for the Participant, the Participant's "spouse" (as defined in Section 15.4), or any dependent of the Participant (as defined in Code Section 152, without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) medical care deductible under Code Section 213(d), determined without regard to whether the expenses exceed any applicable income limit;
- (b) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (c) payment of tuition, related educational fees, and room and board expenses for the next 12 months of post secondary education for the Participant, or the Participant's "spouse" (as defined in Section 15.4), child or other dependent (as defined in Code Section 152, without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof);

- (d) payments necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage on the Participant's principal residence;
- (e) payment of funeral or burial expenses for the Participant's deceased parent, "spouse" (as defined in Section 15.4), child or dependent (as defined in Code Section 152, without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof); and
- (f) expenses for the repair of damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code Section 165 (determined without regard to whether the loss exceeds any applicable income limit).

### **13.9 Satisfaction of Necessity Requirement for Hardship Withdrawals**

A withdrawal shall be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant only if the Participant satisfies all of the following requirements:

- (a) The withdrawal is not in excess of the amount of the immediate and heavy financial need of the Participant.
- (b) The Participant has obtained all distributions, other than hardship distributions, and all non-taxable loans currently available under all plans maintained by an Employer or any Related Company.
- (c) The Participant's 401(k) Contributions and the Participant's "elective contributions" and "employee contributions", as defined in Section 7.1, under all other qualified and non qualified deferred compensation plans maintained by an Employer or any Related Company shall be suspended for at least 6 months after his receipt of the withdrawal.

A Participant shall not fail to be treated as an Eligible Employee for purposes of applying the limitations contained in Article VII of the Plan merely because his 401(k) Contributions are suspended in accordance with this Section.

### **13.10 Conditions and Limitations on Hardship Withdrawals**

Hardship withdrawals made pursuant to this Article shall be subject to the following conditions and limitations:

- (a) A Participant must apply for a hardship withdrawal such number of days prior to the date as of which it is to be effective as the Administrator may prescribe.
- (b) Hardship withdrawals may be made effective as soon as administratively practicable after the Administrator's approval of the Participant's withdrawal application.

- (c) The amount of a hardship withdrawal may include any amounts necessary to pay any Federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution.

**13.11 Order of Withdrawal from a Participant's Sub-Accounts**

Distribution of a withdrawal amount shall be made from a Participant's Sub-Accounts, to the extent necessary, in the order prescribed by the Administrator, which order shall be uniform with respect to all Participants and non-discriminatory. If the Sub-Account from which a Participant is receiving a withdrawal is invested in more than one Investment Fund, the withdrawal shall be charged against the Investment Funds as directed by the Administrator.

**ARTICLE XIV  
TERMINATION OF EMPLOYMENT AND SETTLEMENT DATE**

**14.1 Termination of Employment and Settlement Date**

A Participant's Settlement Date shall occur on the date he terminates employment with the Employers and all Related Companies because of death, disability, retirement, or other termination of employment. Written notice of a Participant's Settlement Date shall be given by the Administrator to the Trustee.

**14.2 Separate Accounting for Non-Vested Amounts**

If as of a Participant's Settlement Date the Participant's vested interest in his Employer Contributions Sub-Account is less than 100 percent, that portion of his Employer Contributions Sub-Account that is not vested shall be accounted for separately from the vested portion and shall be disposed of as provided in the following Section. If prior to such Settlement Date the Participant received a distribution under the Plan and the non-vested portion of his Employer Contributions Sub-Account was not forfeited as provided in the following Section, his vested interest in his Employer Contributions Sub-Account shall be an amount ("X") determined by the following formula:

$$X = P(AB + D) - D$$

For purposes of the formula:

P = The Participant's vested interest in his Employer Contributions Sub-Account on the date distribution is to be made.

AB = The balance of the Participant's Employer Contributions Sub-Account as of the Valuation Date immediately preceding the date distribution is to be made.

D = The amount of all prior distributions from the Participant's Employer Contributions Sub-Account. Amounts deemed to have been distributed to a Participant pursuant to Code Section 72(p), but which have not actually been offset against the Participant's Account balance shall not be considered distributions hereunder.

### 14.3 Disposition of Non-Vested Amounts

That portion of a Participant's Employer Contributions Sub-Account that is not vested upon the occurrence of his Settlement Date shall be disposed of as follows:

- (a) If the Participant has no vested interest in his Account upon the occurrence of his Settlement Date or his vested interest in his Account as of the date of distribution does not exceed \$5,000, resulting in the distribution or deemed distribution to the Participant of his entire vested interest in his Account, the non-vested balance in the Participant's Employer Contributions Sub-Account shall be forfeited and his Account closed as of (i) the Participant's Settlement Date, if the Participant has no vested interest in his Account and is therefore deemed to have received distribution on that date, or (ii) the date actual distribution is made to the Participant.
- (b) If the Participant's vested interest in his Account exceeds \$5,000 and the Participant is eligible for and consents in writing to a single sum payment of his vested interest in his Account, the non-vested balance in the Participant's Employer Contributions Sub-Account shall be forfeited and his Account closed as of the date the single sum payment occurs, provided that such distribution is made because of the Participant's Settlement Date. A distribution is deemed to be made because of a Participant's Settlement Date if it occurs prior to the end of the second Plan Year beginning on or after the Participant's Settlement Date.
- (c) If neither paragraph (a) nor paragraph (b) is applicable, the non-vested balance in the Participant's Employer Contributions Sub-Account shall continue to be held in such Sub-Account and shall not be forfeited until the last day of the 5-year period beginning on his Settlement Date, provided that the Participant is not reemployed by an Employer or a Related Company prior to that date.

### 14.4 Treatment of Forfeited Amounts

Whenever the non-vested balance of a Participant's Employer Contributions Sub-Account is forfeited during a Plan Year in accordance with the provisions of the preceding Section, the amount of such forfeiture, determined as of the last day of the Plan Year in which the forfeiture occurs, shall be applied against the Employer Contribution obligations for any subsequent Contribution Period of the Employer for which the Participant last performed services as an Employee or against Plan expenses, as directed by the Administrator. Notwithstanding the foregoing, however, should the amount of all such forfeitures for any Contribution Period with respect to any Employer exceed the amount of such Employer's Employer Contribution obligations for the Contribution Period, the excess amount of such forfeitures, reduced by any amount used to pay Plan expenses, shall be allocated among Participants' Accounts in accordance with the provisions of the following Section.

#### 14.5 Allocations of Forfeitures

Forfeited amounts that are required to be allocated among Participants' Accounts in accordance with the preceding Section shall be allocated among the Accounts of Participants who are Eligible Employees during the Plan Year for which the forfeiture is being allocated as follows:

- (a) Prior to allocating forfeitures attributable to Matching Contributions and /or Nonelective contributions among Participants' Accounts, the Administrator may direct that any portion or all of such forfeited amounts shall be applied against Plan expenses. The forfeited amounts to be allocated among Participants' Accounts shall be reduced by any such amounts that are applied against Plan expenses as provided herein.
- (b) To receive an allocation of forfeitures attributable to Matching Contributions, a Participant must have been employed during the Plan Year by the Employer for which the Participant whose Account is being forfeited last performed services.
- (c) Forfeitures attributable to Matching Contributions shall be allocated in the ratio which an eligible Participant's "deferral percentage", as defined in Section 7.1, bears to the aggregate value of the "deferral percentages" of all such eligible Participants.
- (d) Forfeitures attributable to Matching Contributions that are credited to a Participant's Account hereunder shall be credited to his Regular Matching Contributions Sub-Account. A Participant's vested interest in amounts attributable to forfeitures allocated to his Matching Contributions Sub-Account hereunder shall be determined under the vesting schedule applicable to Regular Matching Contributions.
- (e) Forfeitures attributable to Matching Contributions that are allocated to a Participant's Account hereunder shall be treated as Matching Contributions and included in determining the Participant's "contribution percentage", as defined in Section 7.1, for the Plan Year for which the forfeitures are allocated.
- (f) To receive an allocation of forfeitures attributable to Nonelective Contributions, a Participant must have been employed during the Plan Year by the Employer for which the Participant whose Account is being forfeited last performed services.
- (g) To receive an allocation of forfeitures attributable to Nonelective Contributions hereunder, a Participant must be employed as a Covered Employee on the last day of the Plan Year.
- (h) Forfeitures attributable to Nonelective Contributions shall be allocated in accordance with the formula specified in Article VI for Nonelective Contributions.
- (i) Forfeitures attributable to Nonelective Contributions that are to be credited to a Participant's Account hereunder shall be credited to his Nonelective Contributions Sub-Account. A Participant's vested interest in amounts attributable to forfeitures allocated to his Nonelective Contributions Sub-Account hereunder shall be determined under the vesting schedule applicable to Nonelective Contributions.

#### **14.6 Recrediting of Forfeited Amounts**

A former Participant who forfeited the non-vested portion of his Employer Contributions Sub-Account in accordance with the provisions of paragraph (a) or (b) of Section 14.3 and who is reemployed by an Employer or a Related Company shall have such forfeited amounts recredited to a new Account in his name, without adjustment for interim gains or losses experienced by the Trust, if:

- (a) he returns to employment with an Employer or a Related Company before the end of the 5-year period beginning on the date he received, or is deemed to have received, distribution of his vested interest in his Account;
- (b) he resumes employment covered under the Plan before the end of the 5-year period beginning on the date he is reemployed;  
and
- (c) if he received actual distribution of his vested interest in his Account, he repays to the Plan the full amount of such distribution that is attributable to Employer Contributions before the end of the 5-year period beginning on the date he is reemployed.

Funds needed in any Plan Year to recredit the Account of a Participant with the amounts of prior forfeitures in accordance with the preceding sentence shall come first from forfeitures that arise during such Plan Year, and then from Trust income earned in such Plan Year, to the extent that it has not yet been allocated among Participants' Accounts as provided in Article XI, with each Trust Fund being charged with the amount of such income proportionately, unless his Employer chooses to make an additional Employer Contribution, and shall finally be provided by his Employer by way of a separate Employer Contribution.

**ARTICLE XV  
DISTRIBUTIONS**

**15.1 Distributions to Participants**

Subject to the provisions of Section 15.4, a Participant whose Settlement Date occurs shall receive distribution of his vested interest in his Account in the form provided under Article XVI beginning as soon as reasonably practicable following his Settlement Date or the date his application for distribution is filed with the Administrator, if later.

**15.2 Partial Distributions to Retired or Terminated Participants**

A Participant whose Settlement Date has occurred, but who has not reached his Required Beginning Date, may elect to receive distribution of all or any portion of his Account at any time prior to his Required Beginning Date in a cash withdrawal or in any other form provided in Article XVI.

**15.3 Distributions to Beneficiaries**

Subject to the provisions of Section 15.4, if a Participant dies prior to his Benefit Payment Date, his Beneficiary shall receive distribution of the Participant's vested interest in his Account in the form provided under Article XVI beginning as soon as reasonably practicable following the date the Beneficiary's application for distribution is filed with the Administrator. If distribution is to be made to a Participant's Spouse, it shall be made available within a reasonable period of time after the Participant's death that is no less favorable than the period of time applicable to other distributions.

If a Participant dies after the date distribution of his vested interest in his Account begins under this Article, but before his entire vested interest in his Account is distributed, his Beneficiary shall receive distribution of the remainder of the Participant's vested interest in his Account beginning as soon as reasonably practicable following the Participant's date of death.

**15.4 Code Section 401(a)(9) Requirements**

The provisions of this Section take precedence over any inconsistent provision of the Plan; provided that the provisions of this Section are not intended to create additional forms of payment that are not otherwise provided under Article XVI.

To the extent required under Code Section 401(a)(9), all distributions made from the Plan shall be determined and made in accordance with the provisions of Code Section 401(a)(9) and the Treasury Regulations issued thereunder, as set forth in this Section.



- (a) A Participant's vested interest in his Account shall be distributed to the Participant no later than the Participant's Required Beginning Date.
- (b) If a Participant dies on or after his Required Beginning Date, but before his vested interest in his Account has been distributed in full, the remainder of the Participant's vested Account balance shall be distributed to the Participant's Beneficiary in a single sum payment as soon as reasonably practicable following the Participant's death.
- (c) If a Participant dies before his Required Beginning Date and before his vested interest in his Account has been distributed in full, the Participant's vested Account balance shall be distributed to the Participant's Beneficiary in a single sum payment no later than the 5th anniversary of the Participant's death; provided that if the Participant's "spouse" is his sole "designated beneficiary" with respect to all or any portion of the Participant's vested Account, the "spouse" may elect to postpone payment until December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later. The "spouse's" election to defer payment must be made no later than September 30 of the calendar year that contains the 5th anniversary of the Participant's death.

If the Participant's "spouse" is a sole "designated beneficiary" with respect to all or any portion of the Participant's interest and the "spouse" dies after the Participant but before distribution to the "spouse" is made, the rules described above shall be applied with respect to the interest for which the "spouse" was the sole "designated beneficiary," substituting the date of the "spouse's" death for the date of the Participant's death. A Participant's "spouse" qualifies as the Participant's sole "designated beneficiary" if she is entitled to the Participant's entire vested interest in his Account or his entire vested interest in a segregated portion of the Participant's Account and no other "designated beneficiary" is entitled to any portion of that interest unless the "spouse" dies prior to receiving full distribution of that interest.

- (d) For purposes of this Section the following terms have the following meanings:
  - (i) A Participant's "**designated beneficiary**" means the individual who is the Participant's Beneficiary under Article XVII of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulations Section 1.401(a)(9)-4.
  - (ii) A Participant's "**spouse**" means the person of the opposite sex to whom the Participant is married in a legal union between one man and one woman as husband and wife.

### **15.5 Cash Outs and Participant Consent**

Notwithstanding any other provision of the Plan to the contrary, if a Participant's vested interest in his Account does not exceed \$5,000, distribution of such vested interest shall be made to the Participant in a single sum payment or through a direct rollover, as described in Article XVI, as soon as reasonably practicable following his Settlement Date.

If a Participant has no vested interest in his Account on his Settlement Date, he shall be deemed to have received distribution of such vested interest on his Settlement Date.

If a Participant's vested interest in his Account exceeds \$5,000, distribution shall not commence to such Participant prior to his Normal Retirement Date or the date he attains age 62, if later, without the Participant's written consent.

### **15.6 Automatic Rollover of Mandatory Distributions**

If distribution of a Participant's vested interest is to be made to a Participant as provided in the preceding Section before the later of the Participant's Normal Retirement Date or the date the Participant attains age 62, and the amount of such vested interest exceeds \$1,000, distribution of such vested interest shall be made through a direct rollover to an individual retirement plan selected by the Administrator, unless the Participant affirmatively elects distribution in a single sum payment or through a direct rollover to an "eligible retirement plan" (as defined in Code Section 402(c)(8)(B), modified as provided in Code Section 401(a)(31)(E)) specified by the Participant. Any distribution made to a Participant's surviving Spouse or other Beneficiary or to an alternate payee under a qualified domestic relations order shall not be subject to the automatic rollover provisions described in the preceding sentence.

### **15.7 Required Commencement of Distribution**

Unless the Participant elects a later date, distribution of his vested interest in his Account shall commence to the Participant no later than 60 days after the close of the Plan Year in which occurs the latest of (i) the Participant's Normal Retirement Date, (ii) the Participant's attainment of age 65, (iii) the tenth anniversary of the year in which the Participant commenced participation, or (iv) the Participant's Settlement Date. A Participant who does not make application for his benefit to commence shall be deemed to have elected to postpone distribution hereunder.

### **15.8 Reemployment of a Participant**

If a Participant whose Settlement Date has occurred is reemployed by an Employer or a Related Company, he shall lose his right to any distribution or further distributions from the Trust arising from his prior Settlement Date and his interest in the Trust shall thereafter be treated in the same manner as that of any other Participant whose Settlement Date has not occurred.

### **15.9 Restrictions on Alienation**

Except as provided in Code Section 401(a)(13) (relating to qualified domestic relations orders), Code Section 401(a)(13)(C) and (D) (relating to offsets ordered or required under a criminal conviction involving the Plan, a civil judgment in connection with a violation or alleged violation of fiduciary responsibilities under ERISA, or a settlement agreement between the Participant and the Department of Labor in connection with a violation or alleged violation of fiduciary responsibilities under ERISA), Treasury Regulations Section 1.401(a)-13(b)(2) (relating to Federal tax levies and judgments), or as otherwise required by law, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have power in any manner to anticipate, transfer, assign (either at law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his benefits under the Plan, or any part thereof, and any attempt to do so shall be void.

### **15.10 Facility of Payment**

If the Administrator finds that any individual to whom an amount is payable hereunder is incapable of attending to his financial affairs because of any mental or physical condition, including the infirmities of advanced age, such amount may, in the discretion of the Administrator, be paid to such individual's court appointed guardian or to another person with a valid power of attorney. The Trustee shall make such payment only upon receipt of written instructions to such effect from the Administrator. Any such payment shall be charged to the Account from which the payment would otherwise have been paid to the individual found incapable of attending to his financial affairs and shall be a complete discharge of any liability therefor under the Plan.

If distribution is to be made to a minor Beneficiary, the Administrator may, in its discretion, pay the amount to a duly qualified guardian or other legal representative, to an adult relative under the applicable state Uniform Gifts to Minors Act, as custodian, or to a trust that has been established for the benefit of the minor. Any such payment shall be charged to the Account from which the payment would otherwise have been paid to the minor and shall be a complete discharge of any liability therefor under the Plan.

### **15.11 Inability to Locate Payee and Non-Negotiated Checks**

If any benefit becomes payable to any person, or to the executor or administrator of any deceased person, and if that person or his executor or administrator does not present himself to the Administrator within a reasonable period after the Administrator mails written notice of his eligibility to receive a distribution hereunder to his last known address and makes such other diligent effort to locate the person as the Administrator determines, such as (1) providing a distribution notice to the lost Participant at his/her last known address by certified mail, (2) use of the Internal Revenue Service letter forwarding program under IRS Revenue Procedure 94-22, (3) use of a commercial locator service, the internet or other general search method, and (4) use of the Social Security Administration search program, that benefit will be forfeited. However, if the payee later files a claim for that benefit, the benefit will be restored.

If a distribution check has been issued and is outstanding for more than 180 days and the Administrator has been unable to locate the payee after diligent efforts have been made to do so, then except as specifically directed by the Administrator, the amount of the check shall be re-deposited to the Plan and forfeited. However, if the payee is subsequently located, the check amount will be restored to an Account established on the payee's behalf, without adjustment for investment gains or losses since the date of issuance.

Any amount forfeited under this Section shall be applied against the Employer Contribution obligations for any subsequent Contribution Period of the Employer for which the Participant last performed services as an Employee or against Plan expenses, as directed by the Administrator. Notwithstanding the foregoing, however, should the amount of all such forfeitures for any Contribution Period with respect to any Employer exceed the amount of such Employer's Employer Contribution obligations for the Contribution Period, the excess amount of such forfeitures shall be the Employer's Employer Contribution obligations for the following Contribution Period.

Forfeited amounts that are required to be allocated among Participants' accounts in accordance with the preceding paragraphs shall be allocated among the Accounts of Participants who are Eligible Employees during the Plan Year for which the forfeiture is being allocated as follows:

- (a) Prior to allocating forfeitures hereunder among Participants' Accounts, the Administrator may direct that any portion or all of such forfeited amounts shall be applied against Plan expenses. The forfeited amounts to be allocated among Participants' Accounts shall be reduced by any such amounts that are applied against Plan expenses as provided herein.
- (b) To receive an allocation of forfeitures hereunder, a Participant must have been employed during the Plan Year by the Employer for which the Participant whose Account is being forfeited last performed services.
- (c) To receive an allocation of forfeitures hereunder, a Participant must be employed as a Covered Employee on the last day of the Plan Year. Notwithstanding any other provision of the Plan to the contrary, the last day allocation requirement described above shall not apply to an Eligible Employee who terminates employment during the Plan Year on or after his Normal Retirement Date or because of death or Disability.

- (d) Forfeitures attributable to Nonelective Contributions shall be allocated in accordance with the formula specified in Article VI for Nonelective Contributions.
- (e) Forfeitures that are to be credited to a Participant's Account hereunder shall be credited to his Nonelective Contributions Sub-Account. A Participant's vested interest in amounts attributable to forfeitures allocated to his Nonelective Contributions Sub-Account hereunder shall be determined under the vesting schedule applicable to Nonelective Contributions.

**15.12 Distribution Pursuant to Qualified Domestic Relations Orders**

Notwithstanding any other provision of the Plan to the contrary, if a qualified domestic relations order so provides, distribution may be made to an alternate payee pursuant to a qualified domestic relations order, as defined in Code Section 414(p), regardless of whether the Participant's Settlement Date has occurred or whether the Participant is otherwise entitled to receive a distribution under the Plan.

A Participant's Spouse or former Spouse who does not qualify as his "spouse" (as defined in Section 15.4) or his Domestic Partner or former Domestic Partner shall not qualify as an alternate payee hereunder unless he qualifies as a dependent of the Participant.

**ARTICLE XVI  
FORM OF PAYMENT**

**16.1 Form of Payment**

Distribution shall be made to a Participant, or his Beneficiary, if the Participant has died, in a single sum payment.

**16.2 Direct Rollover**

Notwithstanding any other provision of the Plan to the contrary, in lieu of receiving distribution in the form of payment provided under this Article, a "qualified distributee" may elect in writing, in accordance with rules prescribed by the Administrator, to have a portion or all of any "eligible rollover distribution" paid directly by the Plan to the "eligible retirement plan" designated by the "qualified distributee". Any such payment by the Plan to another "eligible retirement plan" shall be a direct rollover.

Notwithstanding the foregoing, a "qualified distributee" may not elect a direct rollover with respect to an "eligible rollover distribution" if the total value of the "eligible rollover distributions" expected to be made to the "qualified distributee" for the year is less than \$200 or with respect to a portion of an "eligible rollover distribution" if the value of such portion is less than \$500.

For purposes of this Section, the following terms have the following meanings:

- (a) An "eligible retirement plan" means any of the following: (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Code Section 408(b), (iii) an annuity plan described in Code Section 403(a) that accepts rollovers, (iv) a qualified trust described in Code Section 401(a) that accepts rollovers, (v) an annuity contract described in Code Section 403(b) that accepts rollovers, (vi) an eligible plan under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and that agrees to separately account for amounts transferred into such plan from the Plan, or (vii) effective for distributions made on or after January 1, 2008, a Roth IRA, as described in Code Section 408A, provided, that for distributions made prior to January 1, 2010, such rollover shall be subject to the limitations contained in Code Section 408A(c)(3)(B).

Notwithstanding the foregoing, effective for distributions made in Plan Years beginning after December 31, 2009, an "eligible retirement plan" with respect to a "qualified distributee" other than the Participant, the Participant's "spouse" (as defined in Section 15.4), or the Participant's former "spouse" (as defined in Section 15.4) means either an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) (an "IRA"). Such IRA must be treated as an IRA inherited from the deceased Participant by the "qualified distributee" and must be established in a manner that identifies it as such.

- (b) An “eligible rollover distribution” means any distribution of all or any portion of the balance of a Participant’s Account; provided, however, that an eligible rollover distribution does not include the following:
  - (i) any distribution to the extent such distribution is required under Code Section 401(a)(9).
  - (ii) any hardship withdrawal made in accordance with the provisions of Article XIII.
- (c) A “qualified distributee” means a Participant, his surviving “spouse” (as defined in Section 15.4), or his “spouse” or former “spouse” (as defined in Section 15.4) who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). Notwithstanding the foregoing, effective for distributions made in Plan Years beginning after December 31, 2009, a “qualified distributee” includes a Participant’s non-spouse Beneficiary who is his designated beneficiary within the meaning of Code Section 401(a)(9)(E).

### **16.3 Notice Regarding Form of Payment**

Within the 60-day period ending 30 days before a Participant’s Benefit Payment Date, the Administrator shall provide the Participant with a written explanation of his right to defer distribution until his Normal Retirement Date, or such later date as may be provided in the Plan, his right to make a direct rollover, and the form of payment provided under the Plan. Distribution of the Participant’s Account may commence fewer than 30 days after such notice is provided to the Participant if (i) the Administrator clearly informs the Participant of his right to consider his election of whether or not to make a direct rollover or to receive a distribution prior to his Normal Retirement Date for a period of at least 30 days following his receipt of the notice and (ii) the Participant, after receiving the notice, affirmatively elects an early distribution.

### **16.4 Distribution in the Form of Employer Stock**

Notwithstanding any other provision of the Plan to the contrary, to the extent that his Account is invested in Employer stock on the date distribution is to be made to a Participant, the Participant may elect to receive distribution of such Account in the form of Employer stock.

**ARTICLE XVII  
BENEFICIARIES**

**17.1 Designation of Beneficiary**

The Beneficiary of a Participant who does not have a Spouse or a Domestic Partner shall be the person or persons designated by such Participant in accordance with rules prescribed by the Administrator. The Beneficiary of a Participant who has a Spouse or a Domestic Partner shall be his Spouse or Domestic Partner, unless the Participant designates a person or persons other than his Spouse or Domestic Partner as Beneficiary with the written consent of his Spouse or Domestic Partner. For purposes of this Section, a Participant shall be treated as not having a Spouse or a Domestic Partner and such Spouse's or Domestic Partner's consent shall not be required if the Participant does not have a Spouse or Domestic Partner on his Benefit Payment Date.

If no Beneficiary has been designated pursuant to the provisions of this Section, or if no Beneficiary survives the Participant and he has no surviving Spouse or Domestic Partner, then the Beneficiary under the Plan shall be the deceased Participant's surviving children in equal shares or, if there are no surviving children, the Participant's estate. If a Beneficiary dies after becoming entitled to receive a distribution under the Plan but before distribution is made to him in full, and if the Participant has not designated another Beneficiary to receive the balance of the distribution in that event, the estate of the deceased Beneficiary shall be the Beneficiary as to the balance of the distribution.

**17.2 Spousal Consent Requirements**

Any written consent given by a Participant's Spouse or Domestic Partner pursuant to this Article must acknowledge the effect of the action taken and must be witnessed by a Plan representative or a notary public. In addition, the Spouse's or Domestic Partner's written consent must either (i) specify any non-Spouse Beneficiary (or, if applicable, any Beneficiary other than the Domestic Partner) designated by the Participant and that such Beneficiary may not be changed without the Spouse's or Domestic Partner's written consent or (ii) acknowledge that the Spouse or Domestic Partner has the right to limit consent to a specific Beneficiary, but permit the Participant to change the designated Beneficiary without the Spouse's or Domestic Partner's further consent. A Participant's Spouse or Domestic Partner will be deemed to have given written consent to the Participant's designation of Beneficiary if the Participant establishes to the satisfaction of a Plan representative that such consent cannot be obtained because the Spouse or Domestic Partner cannot be located or because of other circumstances set forth in Section 401(a)(11) of the Code and regulations issued thereunder. Any written consent given or deemed to have been given by a Participant's Spouse or Domestic Partner hereunder shall be valid only with respect to the Spouse or Domestic Partner who signs the consent.



### **17.3 Revocation of Beneficiary Designation Upon Divorce**

Notwithstanding any other provision of this Article XVII to the contrary, if a Participant designates his or her Spouse as Beneficiary under the Plan, such designation shall automatically become null and void as of the date of any final divorce or similar decree or order unless either (i) the Participant re-designates such former Spouse as his Beneficiary after the date of the final decree or order or (ii) such former Spouse is designated as the Participant's Beneficiary under a qualified domestic relations order; provided that such former Spouse shall be the Participant's Beneficiary under this clause (ii) only to the extent required in accordance with the qualified domestic relations order.

Similarly, and notwithstanding any other provision of this Article XVII to the contrary, if a Participant designates his Domestic Partner as Beneficiary under the Plan, such designation shall automatically become null and void as of the date of the dissolution of the domestic partnership unless either (i) the Participant re-designates such former Domestic Partner as his Beneficiary after the date of such dissolution or (ii) such former Domestic Partner is the Participant's dependent alternate payee under a qualified domestic relations order and is designated as the Participant's Beneficiary under such order.

**ARTICLE XVIII  
ADMINISTRATION**

**18.1 Authority of the Sponsor**

The Sponsor, which shall be the administrator for purposes of ERISA and the plan administrator for purposes of the Code, shall be responsible for the administration of the Plan and, in addition to the powers and authorities expressly conferred upon it in the Plan, shall have all such powers and authorities as may be necessary to carry out the provisions of the Plan, including the power and authority to interpret and construe the provisions of the Plan, to make benefit determinations, and to resolve any disputes which arise under the Plan. The Sponsor may employ such attorneys, agents, and accountants as it may deem necessary or advisable to assist in carrying out its duties hereunder. The Sponsor shall be a "named fiduciary" as that term is defined in ERISA Section 402(a)(2). The Sponsor, by action of its board of directors, may:

- (a) allocate any of the powers, authority, or responsibilities for the operation and administration of the Plan (other than trustee responsibilities as defined in ERISA Section 405(c)(3)) among named fiduciaries; and
- (b) designate a person or persons other than a named fiduciary to carry out any of such powers, authority, or responsibilities;

except that no allocation by the Sponsor of, or designation by the Sponsor with respect to, any of such powers, authority, or responsibilities to another named fiduciary or a person other than a named fiduciary shall become effective unless such allocation or designation shall first be accepted by such named fiduciary or other person in a writing signed by it and delivered to the Sponsor.

**18.2 Discretionary Authority**

In carrying out its duties under the Plan, including making benefit determinations, interpreting or construing the provisions of the Plan, making factual determinations, and resolving disputes, the Sponsor (or any individual to whom authority has been delegated in accordance with Section 18.1) shall have absolute discretionary authority. The decision of the Sponsor (or any individual to whom authority has been delegated in accordance with Section 18.1) shall be final and binding on all persons and entitled to the maximum deference allowed by law.

**18.3 Action of the Sponsor**

Any act authorized, permitted, or required to be taken under the Plan by the Sponsor and which has not been delegated in accordance with Section 18.1, may be taken by a majority of the members of the board of directors of the Sponsor, either by vote at a meeting, or in writing without a meeting, or by the employee or employees of the Sponsor designated by the board of directors to carry out such acts on behalf of the Sponsor. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Sponsor under the Plan shall be in writing and signed by either (i) a majority of the members of the Sponsor's board of directors or by such member or members as may be designated by an instrument in writing, signed by all the members thereof, as having authority to execute such documents on its behalf, or (ii) the employee or employees authorized to act for the Sponsor in accordance with the provisions of this Section.

#### 18.4 Claims Review Procedure

Except to the extent that the provisions of any collective bargaining agreement provide another method of resolving claims for benefits under the Plan, the provisions of this Section shall control whenever a claim for benefits under the Plan filed by any person (referred to in this Section as the "Claimant") is denied. The provisions of this Section shall also control whenever a Claimant seeks a remedy under any provision of ERISA or other applicable law in connection with any error regarding his Account (including a failure or error in implementing investment directions) and such claim is denied.

Whenever a claim under the Plan is denied, whether in whole or in part, the Sponsor shall transmit a written notice of such decision to the Claimant within 90 days of the date the claim was filed or, if special circumstances require an extension, within 180 days of such date, which notice shall be written in a manner calculated to be understood by the Claimant and shall contain a statement of (i) the specific reasons for the denial of the claim, (ii) specific reference to pertinent Plan provisions on which the denial is based, (iii) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such information is necessary, (iv) that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, (v) records and other information relevant to the Claimant's claim, a description of the review procedures and in the event of an adverse review decision, a statement describing any voluntary review procedures and the Claimant's right to obtain copies of such procedures, and (vi) a statement that there is no further administrative review following the initial review, and that the Claimant has a right to bring a civil action under ERISA Section 502(a) if the Sponsor's decision on review is adverse to the Claimant. The notice shall also include a statement advising the Claimant that, within 60 days of the date on which he receives such notice, he may obtain review of such decision in accordance with the procedures hereinafter set forth. Within such 60-day period, the Claimant or his authorized representative may request that the claim denial be reviewed by filing with the Sponsor a written request therefor, which request shall contain the following information:

- (a) the date on which the Claimant's request was filed with the Sponsor; provided that the date on which the Claimant's request for review was in fact filed with the Sponsor shall control in the event that the date of the actual filing is later than the date stated by the Claimant pursuant to this paragraph;

- (b) the specific portions of the denial of his claim which the Claimant requests the Sponsor to review;
- (c) a statement by the Claimant setting forth the basis upon which he believes the Sponsor should reverse the previous denial of his claim for benefits and accept his claim as made; and
- (d) any written material (offered as exhibits) which the Claimant desires the Sponsor to examine in its consideration of his position as stated pursuant to paragraph (c) of this Section.

Within 60 days of the date determined pursuant to paragraph (a) of this Section or, if special circumstances require an extension, within 120 days of such date, the Sponsor shall conduct a full and fair review of the decision denying the Claimant's claim for benefits and shall render its written decision on review to the Claimant. The Sponsor's decision on review shall be written in a manner calculated to be understood by the Claimant and shall specify the reasons and Plan provisions upon which the Sponsor's decision was based.

Notwithstanding the foregoing, special procedures apply for processing claims and reviewing prior claim determinations if a Claimant's claim for benefits is contingent upon a determination as to whether a Participant is Disabled under the Plan.

#### **18.5 Special Rules Applicable to Claims Related to Investment Errors**

Any person alleging that there has been a failure or error in implementing investment directions with respect to a Participant's Account must file a claim with the Administrator on or before the expiration of the statute of limitations relating to benefit claims as set forth in ERISA. Any claim filed outside of such period shall be limited to the benefit that would have been determined if the claim were timely filed, and therefore any adjustments shall be calculated for such period only.

#### **18.6 Exhaustion of Remedies**

No civil action for benefits under the Plan shall be brought unless and until the aggrieved person has (a) submitted a timely claim for benefits in accordance with this Article, (b) been notified by the Administrator that the claim has been denied, (c) filed a written request for a review of the claim in accordance with the preceding Section, (d) been notified in writing of an adverse benefit determination on review, and (e) filed the civil action within 1 year of the date he receives a final adverse determination of his claim on review.

### **18.7 Qualified Domestic Relations Orders**

The Sponsor shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall be in writing and shall comply with the provisions of Code Section 414(p) and regulations issued thereunder.

A Participant's Spouse or former Spouse who does not qualify as his "spouse" (as defined in Section 15.4) or his Domestic Partner or former Domestic Partner shall not qualify as an alternate payee under a qualified domestic relations order unless he qualifies as a dependent of the Participant.

### **18.8 Indemnification**

In addition to whatever rights of indemnification the members of the Sponsor's board of directors or any employee or employees of the Sponsor to whom any power, authority, or responsibility is delegated pursuant to Section 18.3, may be entitled under the articles of incorporation or regulations of the Sponsor, under any provision of law, or under any other agreement, the Sponsor shall satisfy any liability actually and reasonably incurred by any such person or persons, including expenses, attorneys' fees, judgments, fines, and amounts paid in settlement (other than amounts paid in settlement not approved by the Sponsor), in connection with any threatened, pending or completed action, suit, or proceeding which is related to the exercising or failure to exercise by such person or persons of any of the powers, authority, responsibilities, or discretion as provided under the Plan, or reasonably believed by such person or persons to be provided hereunder, and any action taken by such person or persons in connection therewith, unless the same is judicially determined to be the result of such person or persons' gross negligence or willful misconduct.

### **18.9 Prudent Man Standard of Care**

The Trustee, the Sponsor and any other fiduciary under the Plan shall discharge his duties under the Plan solely in the interests of Participants and Beneficiaries and, in accordance with the requirements of ERISA Section 404(a)(1)(B), with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character with like aims.

### **18.10 Actions Binding**

Subject to the provisions of Section 18.4, any action taken by the Sponsor which is authorized, permitted, or required under the Plan shall be final and binding upon the Employers, the Trustee, all persons who have or who claim an interest under the Plan, and all third parties dealing with the Employers or the Trustee.

**ARTICLE XIX  
AMENDMENT AND TERMINATION**

**19.1 Amendment by Plan Sponsor**

Subject to the provisions of Section 19.3, the Sponsor may at any time and from time to time, by action of its board of directors, or such officers of the Sponsor as are authorized by its board of directors, amend the Plan, either prospectively or retroactively. Any such amendment shall be by written instrument executed by the Sponsor.

**19.2 Amendment by Volume Submitter Practitioner**

In the event that there is a change in the law applicable to the Plan, as reflected in the Code, regulations issued thereunder, revenue rulings, or other statements published by the Internal Revenue Service, the "volume submitter practitioner" may amend the Plan to comply with such changes on behalf of the Sponsors who have adopted its "specimen plan" prior to the date that its "specimen plan" is amended to comply with such change. In addition, the "volume submitter practitioner" may amend the Plan to correct its prior approved "specimen plan." No amendment by the "volume submitter practitioner" shall be effective prior to February 17, 2005.

The "volume submitter practitioner" shall maintain, or have maintained on its behalf, a record of the Sponsors adopting its "specimen plan." The "volume submitter practitioner" shall make reasonable and diligent efforts to ensure that a copy of any amendment adopted hereunder is provided to each Sponsor at the Sponsor's last known address, as shown in the record maintained in accordance with the preceding sentence. Where necessary, the "volume submitter practitioner" shall make reasonable and diligent efforts to ensure that each Sponsor adopts new documents when necessary.

An amendment made by the "volume submitter practitioner" in accordance with the provisions of this Section may be made effective on a date prior to the first day of the Plan Year in which it is adopted if, in published guidance, the Internal Revenue Service either permits or requires such an amendment to be made to enable the Plan and Trust to satisfy the applicable requirements of the Code and all requirements for the retroactive amendment are satisfied.

The "volume submitter practitioner" may not amend a Plan on behalf of its Sponsor if either (a) the Plan modifies the "specimen plan" to incorporate a type of plan that is not permitted under the volume submitter program, as described in applicable Revenue Procedures or other statements of the Internal Revenue Service, or (b) the Internal Revenue Service has advised the Sponsor that the Plan modifies the "specimen plan" in such a manner or to such an extent that the Plan must be treated as an individually-designed plan and will not receive the extended 6-year remedial amendment cycle applicable to volume submitter plans.

For purposes of this Section, the following terms have the following meanings:

- (a) The “**specimen plan**” means the plan with respect to which the Internal Revenue Service has issued an advisory letter to the “volume submitter practitioner.”
- (b) The “**volume submitter practitioner**” means Thompson Hine, LLP d/b/a Plan Document Systems.

### **19.3 Limitation on Amendment**

Except as otherwise required by law, no amendment shall be made to the Plan that decreases the accrued benefit of any Participant or Beneficiary, except that nothing contained herein shall restrict the right to amend the provisions of the Plan relating to the administration of the Plan and Trust. Moreover, no such amendment shall be made hereunder which shall permit any part of the Trust to revert to an Employer or any Related Company or be used or be diverted to purposes other than the exclusive benefit of Participants and Beneficiaries. The Sponsor shall make no retroactive amendment to the Plan unless such amendment satisfies the requirements of Code Section 401(b) and/or Treasury Regulations Section 1.401(a)(4)-11(g), as applicable.

### **19.4 Termination**

The Sponsor reserves the right, by action of its board of directors, to terminate the Plan as to all Employers at any time (the effective date of such termination being hereinafter referred to as the “termination date”). Upon any such termination of the Plan, the following actions shall be taken for the benefit of Participants and Beneficiaries:

- (a) As of the termination date, each Investment Fund shall be valued and all Accounts and Sub-Accounts shall be adjusted in the manner provided in Article XI, with any unallocated contributions or forfeitures being allocated as of the termination date in the manner otherwise provided in the Plan. The termination date shall become a Valuation Date for purposes of Article XI. In determining the net worth of the Trust, there shall be included as a liability such amounts as shall be necessary to pay all expenses in connection with the termination of the Trust and the liquidation and distribution of the property of the Trust, as well as other expenses, whether or not accrued, and shall include as an asset all accrued income.
- (b) All Accounts shall then be disposed of to or for the benefit of each Participant or Beneficiary in accordance with the provisions of Article XV as if the termination date were his Settlement Date; provided, however, that notwithstanding the provisions of Article XV, if the Plan does not offer an annuity option and if neither his Employer nor a Related Company establishes or maintains another defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7)), the Participant’s written consent to the commencement of distribution shall not be required regardless of the value of the vested portions of his Account.

- (c) Notwithstanding the provisions of paragraph (b) of this Section, no distribution shall be made to a Participant of any portion of the balance of his 401(k) Contributions Sub-Account on account of Plan termination (other than a distribution made in accordance with Article XIII or required in accordance with Code Section 401(a)(9)) unless (i) neither his Employer nor a Related Company establishes or maintains another defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7), a tax credit employee stock ownership plan as defined in Code Section 409, a simplified employee pension as defined in Code Section 408(k), a SIMPLE IRA plan as defined in Code Section 408(p), a plan or contract that meets the requirements of Code Section 403(b), or a plan that is described in Code Section 457(b) or (f)) either at the time the Plan is terminated or at any time during the period ending 12 months after distribution of all assets from the Plan; provided, however, that this provision shall not apply if fewer than 2% of the Eligible Employees under the Plan were eligible to participate at any time in such other defined contribution plan during the 24 month period beginning 12 months before the Plan termination, and (ii) the distribution the Participant receives is a "lump sum distribution" as defined in Code Section 402(e)(4), without regard to clauses (I), (II), (III), and (IV) of sub paragraph (D)(i) thereof.

Upon any such Plan termination, the vested interest of each Participant and Beneficiary in his Employer Contributions Sub-Account shall be 100 percent; and, if there is a partial termination of the Plan, the vested interest of each Participant and Beneficiary who is affected by the partial termination in his Employer Contributions Sub-Account shall be 100 percent. For purposes of the preceding sentence only, the Plan shall be deemed to terminate automatically if there shall be a complete discontinuance of contributions hereunder by all Employers.

#### **19.5 Inability to Locate Payee on Plan Termination**

If distribution of a Participant's Account is to be made to the Participant, his Beneficiary, or an alternate payee under a qualified domestic relations order (a "payee") on account of the termination of the Plan, and such payee does not present himself to the Administrator within a reasonable period after the Administrator mails written notice of his eligibility to receive a distribution hereunder to his last known address and makes such other diligent effort to locate the person as the Administrator determines, distribution of such Account shall be made at the direction of the Administrator through a direct rollover to an individual retirement plan established on behalf of the payee with a provider selected by the Administrator, purchase of an annuity contract on behalf of the payee, or transfer to another "eligible retirement plan", as defined in Section 16.2.



## **19.6 Reorganization**

The merger, consolidation, or liquidation of any Employer with or into any other Employer or a Related Company shall not constitute a termination of the Plan as to such Employer. If an Employer disposes of substantially all of the assets used by the Employer in a trade or business or disposes of a subsidiary and in connection therewith one or more Participants terminates employment but continues in employment with the purchaser of the assets or with such subsidiary, no distribution from the Plan shall be made to any such Participant from his 401(k) Contributions Sub-Account prior to his severance from employment (other than a distribution made in accordance with Article XIII or required in accordance with Code Section 401(a)(9)), except that a distribution shall be permitted to be made in such a case, subject to the Participant's consent (to the extent required by law), if (i) the distribution would constitute a "lump sum distribution" as defined in Code Section 402(e)(4), without regard to clauses (I), (II), (III), and (IV) of sub paragraph (D)(i) thereof, (ii) the Employer continues to maintain the Plan after the disposition, (iii) the purchaser does not maintain the Plan after the disposition, and (iv) the distribution is made by the end of the second calendar year after the calendar year in which the disposition occurred.

## **19.7 Withdrawal of an Employer**

An Employer other than the Sponsor may withdraw from the Plan at any time upon notice in writing to the Administrator (the effective date of such withdrawal being hereinafter referred to as the "withdrawal date"), and shall thereupon cease to be an Employer for all purposes of the Plan. An Employer shall be deemed automatically to withdraw from the Plan in the event of its complete discontinuance of contributions, or, subject to Section 19.6 and unless the Sponsor otherwise directs, it ceases to be a Related Company of the Sponsor or any other Employer. Upon the withdrawal of an Employer, the withdrawing Employer shall determine whether a partial termination has occurred with respect to its Employees. In the event that the withdrawing Employer determines a partial termination has occurred, the action specified in Section 19.4 shall be taken as of the withdrawal date, as on a termination of the Plan, but with respect only to Participants who are employed solely by the withdrawing Employer, and who, upon such withdrawal, are neither transferred to nor continued in employment with any other Employer or a Related Company. The interest of any Participant employed by the withdrawing Employer who is transferred to or continues in employment with any other Employer or a Related Company, and the interest of any Participant employed solely by an Employer or a Related Company other than the withdrawing Employer, shall remain unaffected by such withdrawal; no adjustment to his Accounts shall be made by reason of the withdrawal; and he shall continue as a Participant hereunder subject to the remaining provisions of the Plan.

**ARTICLE XX**  
**ADOPTION BY OTHER ENTITIES**

**20.1 Adoption by Related Companies**

A Related Company that is not an Employer may, with the consent of the Sponsor, adopt the Plan and become an Employer hereunder by causing an appropriate written instrument evidencing such adoption to be executed in accordance with the requirements of its organizational authority. Any such instrument shall specify the effective date of the adoption.

**20.2 Effective Plan Provisions**

An Employer who adopts the Plan shall be bound by the provisions of the Plan in effect at the time of the adoption and as subsequently in effect because of any amendment to the Plan.

**ARTICLE XXI  
MISCELLANEOUS PROVISIONS**

**21.1 No Commitment as to Employment**

Nothing contained herein shall be construed as a commitment or agreement upon the part of any person to continue his employment with an Employer or Related Company, or as a commitment on the part of any Employer or Related Company to continue the employment, compensation, or benefits of any person for any period.

**21.2 Benefits**

Nothing in the Plan nor the Trust Agreement shall be construed to confer any right or claim upon any person, firm, or corporation other than the Employers, the Trustee, Participants, and Beneficiaries.

**21.3 No Guarantees**

The Employers, the Administrator, and the Trustee do not guarantee the Trust from loss or depreciation, nor do they guarantee the payment of any amount which may become due to any person hereunder.

**21.4 Expenses**

The expenses of operation and administration of the Plan, including the expenses of the Administrator and fees of the Trustee, shall be paid from the Trust, unless the Sponsor elects to make payment. To the extent paid from the Trust, administrative expenses shall be paid first from any forfeitures the Administrator has directed to be used for payment of expenses. Any remaining expenses shall be allocated among Participants' Accounts.

Notwithstanding the foregoing, the costs incident to the management of the assets of an Investment Fund or to the purchase or sale of securities held in an Investment fund shall be allocable to Accounts invested in such Investment Fund and administrative expenses that are incurred directly with respect to an individual Participant's Account will be allocated to that Account.

**21.5 Precedent**

Except as otherwise specifically provided, no action taken in accordance with the Plan shall be construed or relied upon as a precedent for similar action under similar circumstances.

#### **21.6 Duty to Furnish Information**

The Employers, the Administrator, and the Trustee shall furnish to any of the others any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties hereunder or otherwise imposed by law.

#### **21.7 Merger, Consolidation, or Transfer of Plan Assets**

The Plan shall not be merged or consolidated with any other plan, nor shall any of its assets or liabilities be transferred to another plan, unless, immediately after such merger, consolidation, or transfer of assets or liabilities, each Participant in the Plan would receive a benefit under the Plan which is at least equal to the benefit he would have received immediately prior to such merger, consolidation, or transfer of assets or liabilities (assuming in each instance that the Plan had then terminated).

#### **21.8 Condition on Employer Contributions**

Any contribution of an Employer hereunder is conditioned upon the continued qualification of the Plan under Code Section 401(a), the exempt status of the Trust under Code Section 501(a), and the deductibility of the contribution under Code Section 404. Except as otherwise provided in this Section and Section 21.9, however, in no event shall any portion of the property of the Trust ever revert to or otherwise inure to the benefit of an Employer or any Related Company.

#### **21.9 Return of Contributions to an Employer**

Notwithstanding any other provision of the Plan or the Trust Agreement to the contrary, in the event any contribution of an Employer made hereunder:

- (a) is made under a mistake of fact, or
- (b) is disallowed as a deduction under Code Section 404,

such contribution, reduced for any losses experienced by the Trust Fund, may be returned to the Employer within one year after the payment of the contribution or the disallowance of the deduction to the extent disallowed, whichever is applicable. In the event the Plan does not initially qualify under Code Section 401(a), any contribution of an Employer made hereunder may be returned to the Employer within one year of the date of denial of the initial qualification of the Plan, but only if an application for determination was made within the period of time prescribed under ERISA Section 403(c)(2)(B).

#### **21.10 Validity of Plan**

The validity of the Plan shall be determined and the Plan shall be construed and interpreted in accordance with the laws of the state or commonwealth in which the

Trustee has its principal place of business or, if the Trustee is an individual or group of individuals, the state or commonwealth in which the Sponsor has its principal place of business, except as preempted by applicable Federal law. The invalidity or illegality of any provision of the Plan shall not affect the legality or validity of any other part thereof.

#### **21.11 Trust Agreement**

The Trust Agreement and the Trust maintained thereunder shall be deemed to be a part of the Plan as if fully set forth herein and the provisions of the Trust Agreement are hereby incorporated by reference into the Plan.

#### **21.12 Parties Bound**

The Plan shall be binding upon the Employers, all Participants and Beneficiaries hereunder, and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them.

#### **21.13 Application of Certain Plan Provisions**

For purposes of the general administrative provisions and limitations of the Plan, a Participant's Beneficiary or alternate payee under a qualified domestic relations order shall be treated as any other person entitled to receive benefits under the Plan. Upon any termination of the Plan, any such Beneficiary or alternate payee under a qualified domestic relations order who has an interest under the Plan at the time of such termination, which does not cease by reason thereof, shall be deemed to be a Participant for all purposes of the Plan. A Participant's Beneficiary, if the Participant has died, or alternate payee under a qualified domestic relations order shall be treated as a Participant for purposes of directing investments as provided in Article X.

#### **21.14 Merged Plans**

In the event another defined contribution plan (the "merged plan") is merged into and made a part of the Plan, each Employee who was eligible to participate in the "merged plan" immediately prior to the merger shall become an Eligible Employee on the date of the merger. In no event shall a Participant's vested interest in his Sub-Account attributable to amounts transferred to the Plan from the "merged plan" (his "transferee Sub-Account") on and after the merger be less than his vested interest in his account under the "merged plan" immediately prior to the merger. Notwithstanding any other provision of the Plan to the contrary, a Participant's service credited for eligibility and vesting purposes under the "merged plan" as of the merger, if any, shall be included as Eligibility and Vesting Service under the Plan to the extent Eligibility and Vesting Service are credited under the Plan. Special provisions applicable to a Participant's "transferee Sub-Account", if any, shall be specifically reflected in the Plan or in an Addendum to the Plan.

### **21.15 Transferred Funds**

If funds from another qualified plan are transferred or merged into the Plan, such funds shall be held and administered in accordance with any restrictions applicable to them under such other plan to the extent required by law and shall be accounted for separately to the extent necessary to accomplish the foregoing.

### **21.16 Veterans Reemployment Rights**

Notwithstanding any other provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u). Any contributions required to be made in accordance with this Section shall be contributed to the Plan within the time period prescribed under applicable regulations or other guidance. Any Matching Contributions required to be made because of 401(k) Contributions made by a Participant in accordance with the provisions of Code Section 414(u), shall be contributed to the Plan as soon as administratively practicable after the date on which the Participant's contributions are paid to the Plan. The Administrator shall notify the Trustee of any Participant with respect to whom additional contributions are made because of qualified military service. Additional contributions made in accordance with the provisions of this Section that are treated as 401(k) Contributions shall not be included in applying the limitations on 401(k) Contributions described in Article VII. In addition, any Matching Contributions required to be made because of 401(k) Contributions made by a Participant in accordance with the provisions of Code Section 414(u), shall not be included in applying the limitations on Matching Contributions described in Article VII.

### **21.17 Delivery of Cash Amounts**

To the extent that the Plan requires the Employers to deliver cash amounts to the Trustee, such delivery may be made through any means acceptable to the Trustee, including wire transfer.

### **21.18 Written Communications**

Any communication among the Employers, the Administrator, and the Trustee that is stipulated under the Plan to be made in writing may be made in any medium that is acceptable to the receiving party and permitted under applicable law. In addition, any communication or disclosure to or from Participants and/or Beneficiaries that is required under the terms of the Plan to be made in writing may be provided in any other medium (electronic, telephonic, or otherwise) that is acceptable to the Administrator and permitted under applicable law.

**21.19 Trust to Trust Transfer**

Any Employee, including an Employee who has not yet satisfied any age and/or service requirements to become an Eligible Employee under the Plan, may, with the approval of the Administrator, have Transfer Contributions made to the Plan on his behalf by causing assets to be directly transferred by the trustee of another qualified retirement plan to the Trustee of the Plan.

Amounts contributed to the Plan through a direct rollover shall not constitute Transfer Contributions.

Transfer Contributions made on behalf of an Employee shall be deposited in the Trust and credited to a Transfer Contributions Sub-Account established in the Employee's name. Such Sub-Account shall share in the allocation of earnings, losses, and expenses of the Trust Fund(s) in which it is invested, but shall not share in allocations of Employer Contributions.

In the event a Transfer Contribution is made on behalf of an Employee who has not yet satisfied the requirements to become an Eligible Employee under the Plan, such Transfer Contributions Sub-Account shall represent the Employee's sole interest in the Plan until he becomes an Eligible Employee.

**21.20 Plan Correction Procedures**

The Employer shall take such action as it deems necessary to correct any Plan failure, including, but not limited to, operational failures, documentation failures (such as a failure to timely amend), failures affecting Plan qualification, etc. Subject to the requirements of the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure 2006-27, or any superseding guidance ("EPCRS"), the Employer may adopt any correction method that it deems appropriate under the circumstances. In addition to any correction method specified in the Plan, the Employer may, where appropriate, make correction in accordance with EPCRS, including the making of a Qualified Nonelective Contribution permitted under EPCRS, but not otherwise provided under the Plan.

In the event of a fiduciary breach or a prohibited transaction, correction shall be made in accordance with the requirements of ERISA and the Code.

**ARTICLE XXII  
TOP-HEAVY PROVISIONS**

**22.1 Definitions**

For purposes of this Article, the following terms shall have the following meanings:

The “**compensation**” of an employee means his “415 compensation” as defined in Section 7.1.

The “**determination date**” with respect to any Plan Year means the last day of the preceding Plan Year, except that the “determination date” with respect to the first Plan Year of the Plan, shall mean the last day of such Plan Year.

A “**key employee**” means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the “determination date” was an officer of an Employer or a Related Company having annual “compensation” greater than \$130,000 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002), a 5% owner of an Employer or a Related Company, or a 1% owner of an Employer or a Related Company having annual “compensation” of more than \$150,000.

A “**non-key employee**” means any Employee who is not a “key employee”.

A “**permissive aggregation group**” means those plans included in each Employer’s “required aggregation group” together with any other plan or plans of the Employer or any Related Company, so long as the entire group of plans would continue to meet the requirements of Code Sections 401(a)(4) and 410.

A “**required aggregation group**” means the group of tax-qualified plans maintained by an Employer or a Related Company consisting of each plan in which a “key employee” participates or participated at any time during the Plan Year containing the “determination date” or any of the 4 preceding Plan Years (regardless of whether the plan has terminated) and each other plan that enables a plan in which a “key employee” participates to meet the requirements of Code Section 401(a)(4) or Code Section 410.

A “**top-heavy group**” with respect to a particular Plan Year means a “required” or “permissive aggregation group” if the sum, as of the “determination date”, of the present value of the cumulative accrued benefits for “key employees” under all defined benefit plans included in such group and the aggregate of the account balances of “key employees” under all defined contribution plans included in such group exceeds 60 percent of a similar sum determined for all employees covered by the plans included in such group.



A “**top heavy plan**” with respect to a particular Plan Year means (i) in the case of a defined contribution plan (including any simplified employee pension plan), a plan for which, as of the “determination date”, the aggregate of the accounts (within the meaning of Code Section 416(g) and the regulations and rulings thereunder) of “key employees” exceeds 60 percent of the aggregate of the accounts of all participants under the plan, with the accounts valued as of the relevant valuation date and increased for any distribution of an account balance made during the 1-year period ending on the “determination date” (5-year period ending on the “determination date” if distribution is made for any reason other than severance from employment, death, or disability), (ii) in the case of a defined benefit plan, a plan for which, as of the “determination date”, the present value of the cumulative accrued benefits payable under the plan (within the meaning of Code Section 416(g) and the regulations and rulings thereunder) to “key employees” exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees, with the present value of accrued benefits for employees (other than “key employees”) to be determined under the accrual method uniformly used under all plans maintained by an Employer or, if no such method exists, under the slowest accrual method permitted under the fractional accrual rate of Code Section 411(b)(1)(C) and including the present value of any part of any accrued benefits distributed during the 1-year period ending on the “determination date” (5-year period ending on the “determination date” if distribution is made for any reason other than severance from employment, death, or disability), and (iii) any plan (including any simplified employee pension plan) included in a “required aggregation group” that is a “top heavy group”. For purposes of this paragraph, the accounts and accrued benefits of any employee who has not performed services for an Employer or a Related Company during the 1 year period ending on the “determination date” shall be disregarded. For purposes of this paragraph, the present value of cumulative accrued benefits under a defined benefit plan for purposes of top heavy determinations shall be calculated using the actuarial assumptions otherwise employed under such plan, except that the same actuarial assumptions shall be used for all plans within a “required” or “permissive aggregation group”. A Participant’s interest in the Plan attributable to any Rollover Contributions, except Rollover Contributions made from a plan maintained by an Employer or a Related Company, shall not be considered in determining whether the Plan is a “top-heavy plan”. Notwithstanding the foregoing, if a plan is included in a “required” or “permissive aggregation group” that is not a “top-heavy group”, such plan shall not be a “top-heavy plan”.

The “**valuation date**” with respect to any “determination date” means the most recent Valuation Date occurring within the 12-month period ending on the “determination date”.

## **22.2 Applicability**

Notwithstanding any other provision of the Plan to the contrary, the provisions of this Article shall be applicable during any Plan Year in which the Plan is determined to be a “top-heavy plan” as hereinafter defined.

### **22.3 Minimum Employer Contribution**

If the Plan is determined to be a “top heavy plan” for a Plan Year, the Employer Contributions and forfeitures allocated to the Account of each “non-key employee” who is an Eligible Employee and who is employed by an Employer or a Related Company on the last day of such top heavy Plan Year shall be no less than the lesser of (i) three percent of his “compensation” or (ii) the largest percentage of “compensation” that is allocated as an Employer Contribution and/or 401(k) Contribution for such Plan Year to the Account of any “key employee”; except that, in the event the Plan is part of a “required aggregation group”, and the Plan enables a defined benefit plan included in such group to meet the requirements of Code Section 401(a)(4) or 410, the minimum allocation of Employer Contributions and forfeitures to each such “non-key employee” shall be 3% of the “compensation” of such “non key employee”. Any minimum allocation to a “non-key employee” required by this Section shall be made without regard to any social security contribution made on behalf of the “non-key employee”, his number of hours of service, his level of “compensation”, or whether he declined to make elective or mandatory contributions.

Employer Contributions allocated to a Participant’s Account in accordance with this Section shall be considered “annual additions” under Article VII for the “limitation year” for which they are made and shall be separately accounted for. Employer Contributions allocated to a Participant’s Account shall be allocated upon receipt among the Investment Funds in accordance with the Participant’s currently effective investment election.

### **22.4 Exclusion of Collectively-Bargained Employees**

Notwithstanding any other provision of this Article, Employees who are covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers shall not be entitled to a minimum allocation or accelerated vesting under this Article, unless otherwise provided in the collective bargaining agreement.

\* \* \*

EXECUTED AT \_\_\_\_\_,

\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SIRIUS XM RADIO INC.

By: \_\_\_\_\_

Title: Dara Altman  
Executive Vice President and  
Chief Administrative Officer

**FINAL 411(a) REGULATIONS COMPLIANCE APPENDIX  
TO  
SIRIUS XM RADIO 401(k) SAVINGS PLAN**

This Compliance Appendix amends the Plan to comply with final Treasury Regulations issued under Code Section 411(a) addressing the interaction between the anti-cutback requirements of Code Section 411(d)(6) and the nonforfeitability requirements of Code Section 411(a). This Compliance Appendix is intended as good faith compliance with the requirements of the final regulations and is to be construed in accordance with the Treasury Regulations construing Code Section 411(a) and is effective for amendments adopted on or after August 9, 2006.

Accordingly, Section 6.13 of the Plan is amended in its entirety to provide as follows:

**6.13 Election of Former Vesting Schedule**

If there is a change in the vesting schedule because the Plan Sponsor adopts an amendment to the Plan that directly or indirectly affects the computation of a Participant's vested interest in his Employer Contributions Sub-Account, the following shall apply:

- (a) In no event shall a Participant's vested interest in his Account on the effective date of the change in vesting schedule be less than his vested interest in his Account immediately prior to the effective date of the amendment.
- (b) In no event shall a Participant's vested interest in attributable to his Account determined as of the later of (i) the effective date of such amendment or (ii) the date such amendment is adopted, be determined on and after the effective date of such amendment under a vesting schedule that is more restrictive than the vesting schedule applicable to such Account immediately prior to the effective date of such amendment.
- (c) Any Participant with 3 or more years of Vesting Service shall have a right to have his vested interest in his Account (including amounts credited to such Account following the effective date of such amendment) continue to be determined under the vesting provisions in effect prior to the amendment rather than under the new vesting provisions, unless the vested interest of the Participant in his Account under the Plan as amended is not at any time less than such vested interest determined without regard to the amendment. A Participant shall exercise his right under this Section by giving written notice of his exercise thereof to the Administrator within 60 days after the latest of (i) the date he receives notice of the amendment from the Administrator, (ii) the effective date of the amendment, or (iii) the date the amendment is adopted.

**415 COMPLIANCE APPENDIX  
TO  
SIRIUS XM RADIO 401(k) SAVINGS PLAN**

This Appendix amends the Plan to comply with final regulations released on April 4, 2007 under Code Section 401(k) (“401(k) regulations revisions”) and Code Section 415 (“final 415 regulations”). This Appendix is intended as good faith compliance with the requirements of the 401(k) regulations revisions and final 415 regulations. To the extent the provisions of the Plan are inconsistent with the provisions of this Appendix, the provisions of this Appendix shall be controlling.

- 
1. Effective the first day of the first Plan Year beginning on or after July 1, 2007, the definition of “Compensation” in Section 1.1 of the Plan is amended by the addition of the following provisions at the end of such definition. This amendment shall have no effect on amounts included as Compensation for periods prior to that date and shall not be construed as creating an inference as to whether post-severance amounts were or were not included in Compensation prior to that date.

Notwithstanding any other provision of the Plan to the contrary, effective for Plan Years beginning on and after July 1, 2007, if a Participant has a severance from employment (as defined in Treasury Regulations Section 1.401(k)-1(d)(2)) with the Employers and all Related Companies, Compensation shall not include amounts received by the Participant following such severance from employment except as provided below:

- Compensation shall include amounts that would otherwise have been paid to the Participant in the course of his employment and are regular compensation for services during the Participant’s regular working hours, compensation for services outside the Participant’s regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation, but only to the extent such amounts (1) would have been includable in Compensation if his employment had continued and (2) are paid before the later of (a) the close of the “limitation year” (as defined in Section 7.1) in which the Participant’s severance from employment occurs or (b) within 2 1/2 months of such severance.
- Compensation shall include amounts that are payments for accrued bona fide sick, vacation or other leave, but only if (1) the Participant would have been able to use such leave if his employment had continued, (2) such amounts would have been includable in Compensation if his employment had continued, and (3) such amounts are paid before the later of (a) the close of the “limitation year” (as defined in Section 7.1) in which the Participant’s severance from employment occurs or (b) within 2 1/2 months of such severance.

- Compensation shall include amounts received by the Participant pursuant to a non-qualified, unfunded deferred compensation plan, but only if the Participant would have received such payments at the same time if he had continued in employment and only to the extent the payments (1) are includable in the Participant's gross income and (2) are made before the later of (a) the close of the "limitation year" (as defined in Section 7.1) in which the Participant's severance from employment occurs or (b) within 2 1/2 months of such severance.
2. Effective beginning the first day of the first limitation year beginning on or after July 1, 2007, the following replaces and supersedes the definition of "annual addition" in Section 7.1.

The "**annual addition**" with respect to a Participant for a "limitation year" means the sum of the following amounts credited to the Participant's account(s) for the "limitation year":

- (a) all employer contributions credited to the Participant's account for the "limitation year" under any qualified defined contribution plan maintained by an Employer or a Related Company, including "elective contributions" (other than "elective contributions" to an eligible deferred compensation plan under Code Section 457) and amounts attributable to forfeitures applied to reduce the employer's contribution obligation, but excluding "catch-up contributions";
- (b) all "employee contributions" credited to the Participant's account for the "limitation year" under any qualified defined contribution plan maintained by an Employer or a Related Company or any qualified defined benefit plan maintained by an Employer or a Related Company if either separate accounts are maintained under the defined benefit plan with respect to such employee contributions or such contributions are mandatory employee contributions within the meaning of Code Section 411(c)(2)(C) (without regard to whether the plan is subject to the provisions of Code Section 411);
- (c) all forfeitures credited to the Participant's account for the "limitation year" under any qualified defined contribution plan maintained by the Employer or a Related Company;
- (d) all amounts credited for the "limitation year" to an individual medical benefit account, as described in Code Section 415(1)(2), established for the Participant as part of a pension or annuity plan maintained by the Employer or a Related Company;

- (e) if the Participant is a key employee, as defined in Code Section 419A(d)(3), all amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after that date, that are attributable to post-retirement medical benefits credited for the "limitation year" to the Participant's separate account under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer or a Related Company; and
- (f) all amounts credited to the Participant for the "limitation year" under a simplified employee pension.

Notwithstanding the foregoing, any restorative payment made to a plan by an Employer or a Related Company to make up for losses to the plan resulting from the action or non-action of a fiduciary for which there is a reasonable risk of liability for a breach of fiduciary duty under ERISA or other applicable federal or state law shall not be treated as an annual addition provided that similarly situated participants are treated similarly with respect to the restorative payment.

Except as otherwise specifically provided below, an amount will be treated as credited to a Participant's account for a "limitation year" if such amount is both (1) allocated to the Participant's account as of a date within such "limitation year" (provided that if allocation of an amount is contingent upon the satisfaction of a future condition, such amount shall not be treated as allocated for purposes of determining "annual additions" for a "limitation year" until the date all such conditions are satisfied) and (2) actually contributed to the account within the applicable period described herein. If contributions are made after the end of the applicable period, they shall be treated as credited to the Participant's account for the "limitation year" in which they are made. The applicable period for making "employee contributions" is within 30 days of the close of the "limitation year." The applicable period for making employer contributions is: (i) for contributions by a taxable entity, within 30 days of the close of the period described in Code Section 404(a)(6), as applicable to the entity's taxable year with or within which the "limitation year" ends; or (ii) for contributions by a non-taxable entity (including a governmental employer) within 15 days of the last day of the 10th calendar month following the end of the calendar year or fiscal year (as applicable, based on how the entity maintains its books) with or within which the "limitation year" ends.

Forfeitures re-allocated to a Participant's account are treated as credited to the Participant's account for the "limitation year" in which they are allocated to such account. Corrective contributions and contributions required by reason of qualified military service (as defined in Code Section 414(u)) are treated as "annual additions" for the "limitation year" to which they relate, rather than the "limitation year" in which they are made.

3. Effective beginning the first day of the first limitation year beginning on or after July 1, 2007, the definition of "415 compensation" in Section 7.1 of the Plan is amended by the addition of the following provisions at the end of such definition.

Notwithstanding any other provision of the Plan to the contrary, effective for "limitation years" beginning on and after July 1, 2007, if a Participant has a severance from employment (as defined in Treasury Regulations Section 1.415(a)-1(f)(5)) with the Employer and all Related Companies, "415 compensation" does not include amounts received by the Participant following such severance from employment except amounts paid before the later of (a) the close of the "limitation year" in which the Participant's severance from employment occurs or (b) within 2 1/2 months of such severance if such amounts:

- would otherwise have been paid to the Participant in the course of his employment, are regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation, and would have been included in the Participant's "415 compensation" if he had continued in employment.
- are payments for accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use such leave if his employment had continued and such amounts would have been includable in "415 compensation" if his employment had continued.
- are received by the Participant pursuant to a non-qualified, unfunded deferred compensation plan, but only if the Participant would have received such payments at the same time if he had continued in employment and only to the extent the payments are includable in the Participant's gross income.

For purposes of this subsection, a Participant will not be considered to have incurred a severance from employment if his new employer continues to maintain the plan with respect to such Participant.

To be included in a Participant's "415 compensation" for a particular "limitation year", an amount must have been received by the Participant (or would have been received, but for the Participant's election under Code Section 125, 132(f)(4), 401(k), 402(h)(1)(B), 403(b), 408(p)(2)(A)(i), or 457) within such "limitation year".

4. Effective beginning the first day of the first Plan Year beginning on or after July 1, 2007, the definition of "test compensation" in Section 7.1 of the Plan is amended by the addition of the following provisions at the end of such definition. Notwithstanding the foregoing, the Administrator may elect to substitute a different definition of compensation that satisfies the requirements of Code Section 414(s).



If a Participant has a severance from employment (as defined in Treasury Regulations Section 1.401(k)-1(d)(2)) with the Employer and all Related Companies, "test compensation" does not include amounts received by the Participant following such severance from employment except amounts paid before the later of (a) the close of the "limitation year" in which the Participant's severance from employment occurs or (b) within 2 1/2 months of such severance if such amounts:

- would otherwise have been paid to the Participant in the course of his employment, are regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation, and would have been included in the Participant's "test compensation" if he had continued in employment.
  - are payments for accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use such leave if his employment had continued and such amounts would have been includable in "test compensation" if his employment had continued.
  - are received by the Participant pursuant to a non-qualified, unfunded deferred compensation plan, but only if the Participant would have received such payments at the same time if he had continued in employment and only to the extent the payments are includable in the Participant's gross income.
5. Effective beginning the first day of the first limitation year beginning on or after July 1, 2007, the following replaces and supersedes Section 7.12 of the Plan.

Notwithstanding any other provision of the Plan to the contrary, the "annual addition" with respect to a Participant for a "limitation year" shall in no event exceed the lesser of (i) the maximum dollar amount permitted under Code Section 415(c)(1)(A), adjusted as provided in Code Section 415(d) (e.g., \$46,000 for the "limitation year" beginning in 2008) or (ii) 100 percent of the Participant's "415 compensation" for the "limitation year"; provided, however, that the limit in clause (i) shall be pro-rated for any short "limitation year". The limit in clause (ii) shall not apply to any contribution to an individual medical account, as defined in Code Section 415(l), or to a post-retirement medical benefits account maintained for a key employee which is treated as an "annual addition" under Code Section 419A(d)(2). A Participant's 401(k) Contributions may be re-characterized as Catch-Up 401(k) Contributions and excluded from the Participant's "annual additions" for the "limitation year" to satisfy the preceding limitation.

If the Employer or a Related Company participates in a multiemployer plan, in determining whether the "annual additions" made on behalf of a Participant to the Plan, when aggregated with "annual additions" made on the Participant's behalf under the multiemployer plan satisfy the above limitation, only "annual additions" made by the Employer (or a Related Company) to the multiemployer plan shall be aggregated with the "annual additions" under the Plan and "415 compensation" shall include only compensation paid to the Participant by the Employer (or a Related Company).

If the “annual addition” to the Account of a Participant in any “limitation year” beginning on or after July 1, 2007, nevertheless exceeds the amount that may be applied for his benefit under the limitations described in clauses (i) and (ii) above, correction shall be made in accordance with the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure 2006-27, or any superseding guidance.

6. Effective beginning the first day of the first limitation year beginning on or after July 1, 2007, the following replaces and supersedes Section 7.13 of the Plan.

If a Participant is covered by any other qualified defined contribution plan (whether or not terminated) maintained by an Employer or a Related Company concurrently with the Plan, and if the “annual addition” to be made under the Plan for the “limitation year” when combined with the “annual addition” to be made under such other qualified defined contribution plan(s) would otherwise exceed the amount that may be applied for the Participant’s benefit under the limitation contained in the preceding Section, the “annual additions” last scheduled for allocation under the Plan and such other plan(s) shall be reduced to the extent necessary so that the limitation in the preceding Section is satisfied. If “annual additions” are scheduled to be allocated as of the same date, any excess shall be allocated pro rata among the defined contribution plans.

If the “annual addition” to the Account of a Participant in any “limitation year” beginning on or after July 1, 2007, when combined with the “annual addition” made under any other qualified defined contribution plan maintained by an Employer or a Related Company nevertheless exceeds the amount that may be applied for the Participant’s benefit under the limitation contained in the preceding Section, correction shall be made in accordance with the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure 2006-27, or any superseding guidance.

**SIRIUS XM RADIO INC. AND SUBSIDIARIES**  
**Subsidiaries**

Satellite CD Radio, Inc.	State of Delaware
Sirius Asset Management Company LLC	State of Delaware
Sirius Entertainment Promotions LLC	State of Delaware
Spend LLC	State of Maryland
Earth Station Ecuador Cia. Ltda.	Quito, Ecuador
XM Satellite Radio Holdings Inc.	State of Delaware
XM Satellite Radio Inc.	State of Delaware
XM Equipment Leasing LLC	State of Delaware
XM EMall Inc.	State of Delaware
XM Radio Inc.	State of Delaware
XM Innovations Inc.	State of Delaware
XM Capital Resources Inc.	State of Delaware
XM 1500 Eckington LLC	State of Delaware
XM Investment LLC	State of Delaware
Effanel Music, Inc.	State of New York
Interoperable Technologies LLC	State of Delaware
Satellite Public Radio Inc.	Washington, D.C.

**Consent of Independent Registered Public Accounting Firm**

We consent to use of our report dated February 29, 2008, except Note 17 related to the 2007 financial information, as to which the date is March 10, 2009, in this Annual Report (Form 10-K) of Sirius XM Radio Inc. (formerly Sirius Satellite Radio Inc.) with respect to the consolidated financial statements of Sirius XM Radio Inc. and Subsidiaries for the year ended December 31, 2009.

Our audit also included the financial statement schedule of Sirius XM Radio Inc. and Subsidiaries listed in Item 15(a)(2). This schedule is the responsibility of the Company's management. Our responsibility is to express an opinion based on our audit. In our opinion, as to which the date is February 29, 2008, except Note 17 related to the 2007 financial information, as to which the date is March 10, 2009, the financial statement schedule referred to above, when considered in relation to the basic financial statements taken as a whole, present fairly in all material respects the information set forth therein.

We consent to the incorporation by reference in the following Registration Statements:

Form S-3 No. 333-158135, No. 333-152548, No. 333-139869, No. 333-130949, No. 333-127169, No. 333-115695, No. 333-108387, No. 333-104406, No. 333-85847, No. 333-65602, and No. 333-64344

Form S-4 No. 333-144845

Form S-8 No. 333-160386, No. 333-159206, No. 333-158156, No. 333-156441, No. 333-152574, No. 333-149186, No. 333-142726, No. 333-139214, No. 333-133277, No. 333-125118, No. 333-119479, No. 333-111221, No. 333-106020, No. 333-101515, No. 333-100083, No. 333-81914, No. 333-74752, No. 333-65473, No. 333-62818, No. 333-47954, No. 333-31362, and No. 333-15085

of our report dated February 29, 2008, except Note 17 related to the 2007 financial information, as to which the date is March 10, 2009, with respect to the consolidated financial statements and schedule of Sirius XM Radio Inc. and Subsidiaries included in this Annual Report (Form 10-K) of Sirius XM Radio Inc. for the year ended December 31, 2009.

/s/ ERNST & YOUNG LLP

New York, NY  
February 25, 2010

**Consent of Independent Registered Public Accounting Firm**

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

We consent to the incorporation by reference in the registration statements ( No. 333-158135, No. 333-152548, No. 333-139869, No. 333-130949, No. 333-127169, No. 333-115695, No. 333-108387, No. 333-104406, No. 333-85847, No. 333-65602, and No. 333-64344) on Forms S-3, in the registration statement (No. 333-144845) on Form S-4, and in the registration statements (No. 333-160386, No. 333-159206, No. 333-158156, No. 333-156441, No. 333-152574, No. 333-149186, No. 333-142726, No. 333-139214, No. 333-133277, No. 333-125118, No. 333-119479, No. 333-111221, No. 333-106020, No. 333-101515, No. 333-100083, No. 333-81914, No. 333-74752, No. 333-65473, No. 333-62818, No. 333-47954, No. 333-31362, and No. 333-15085), on Forms S-8 of Sirius XM Radio Inc. of our reports dated February 25, 2010, with respect to the consolidated balance sheets of Sirius XM Radio Inc. and subsidiaries as of December 31, 2009 and 2008, and the related consolidated statements of operations, stockholders' equity (deficit) and comprehensive loss, and cash flows for each of the years then ended, and the related financial statement schedule for each of the years then ended, and with respect to the effectiveness of internal control over financial reporting as of December 31, 2009, which reports appear in the December 31, 2009 annual report on Form 10-K of Sirius XM Radio Inc.

/s/ KPMG LLP

New York, New York  
February 25, 2010

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Mel Karmazin, the Chief Executive Officer of Sirius XM Radio Inc., certify that:

1. I have reviewed this Annual Report on Form 10-K of Sirius XM Radio Inc. for the fiscal year ended December 31, 2009;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any changes in the registrant's internal controls over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Mel Karmazin  
**Mel Karmazin**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

February 25, 2010

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, David J. Frear, the Executive Vice President and Chief Financial Officer of Sirius XM Radio Inc., certify that:

1. I have reviewed this Annual Report on Form 10-K of Sirius XM Radio Inc. for the fiscal year ended December 31, 2009;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any changes in the registrant's internal controls over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ David J. Frear

**David J. Frear**  
**Executive Vice President and**  
**Chief Financial Officer**  
**(Principal Financial Officer)**

February 25, 2010

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY  
ACT OF 2002**

In connection with the Annual Report of Sirius XM Radio Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mel Karmazin, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Mel Karmazin

**Mel Karmazin**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

February 25, 2010

*A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.*



**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY  
ACT OF 2002**

In connection with the Annual Report of Sirius XM Radio Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David J. Frear, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ David J. Frear

**David J. Frear**  
**Executive Vice President and**  
**Chief Financial Officer**  
**(Principal Financial Officer)**

February 25, 2010

*A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.*