

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

FORM 10-Q

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

For the quarterly period ended September 30, 2004

Commission file number 0-24710

**SIRIUS SATELLITE RADIO INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**52-1700207**  
(I.R.S. Employer  
Identification No.)

**1221 Avenue of the Americas, 36th Floor**  
**New York, New York 10020**  
(Address of principal executive offices)  
(Zip code)

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

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  No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock, \$.001 par value  
(Class)

1,263,116,089 shares  
(Outstanding as of November 5, 2004)

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY  
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**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share amounts)  
(Unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2004	2003	2004	2003
<b>Revenue:</b>				
Subscriber revenue, including effects of mail-in rebates	\$ 18,025	\$ 4,197	\$ 40,177	\$ 7,780
Advertising revenue, net of agency fees	249	39	399	83
Equipment revenue	823	—	1,013	—
Other revenue	19	22	48	59
<b>Total revenue</b>	<b>19,116</b>	<b>4,258</b>	<b>41,637</b>	<b>7,922</b>
<b>Operating expenses:</b>				
Cost of services (excludes depreciation expense shown separately below):				
Satellite and transmission	7,620	7,986	24,215	23,541
Programming and content	18,877	7,498	37,972	21,711
Customer service and billing	5,329	2,236	13,718	20,758
Cost of equipment	1,146	—	1,615	—
Sales and marketing	42,500	25,602	103,248	85,762
Subscriber acquisition costs	47,066	25,888	108,758	47,025
General and administrative	11,808	7,156	31,009	28,714
Research and development	10,444	5,428	22,090	18,868
Depreciation expense	23,811	23,666	71,082	71,229
Equity granted to third parties and employees <sup>(1)</sup>	17,752	2,285	47,660	2,727
<b>Total operating expenses</b>	<b>186,353</b>	<b>107,745</b>	<b>461,367</b>	<b>320,335</b>
Loss from operations	(167,237)	(103,487)	(419,730)	(312,413)
<b>Other (expense) income:</b>				
Debt restructuring	—	—	—	256,538
Interest and investment income	2,291	1,341	5,906	4,011
Interest expense	(5,267)	(4,543)	(34,235)	(26,573)
Other income	1,340	—	1,411	—
<b>Total other (expense) income</b>	<b>(1,636)</b>	<b>(3,202)</b>	<b>(26,918)</b>	<b>233,976</b>
Loss before income taxes	(168,873)	(106,689)	(446,648)	(78,437)
Income tax expense	(560)	—	(3,641)	—
Net loss	(169,433)	(106,689)	(450,289)	(78,437)
Preferred stock dividends	—	—	—	(8,574)
Preferred stock deemed dividends	—	—	—	(79,634)
Net loss applicable to common stockholders	\$ (169,433)	\$ (106,689)	\$ (450,289)	\$ (166,645)
Net loss per share applicable to common stockholders (basic and diluted)	\$ (0.14)	\$ (0.11)	\$ (0.37)	\$ (0.22)
Weighted average common shares outstanding (basic and diluted)	1,236,845	998,156	1,230,149	755,009

(1) Allocation of equity granted to third parties and employees to other operating expenses:

Satellite and transmission	\$ 202	\$ 166	\$ 797	\$ 275
Programming and content	5,520	265	8,397	402
Customer service and billing	53	32	185	42
Sales and marketing	8,942	723	28,391	660
Subscriber acquisition costs	334	—	334	—
General and administrative	2,159	957	7,415	1,127
Research and development	542	142	2,141	221
	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
Total equity granted to third parties and employees	\$ 17,752	\$ 2,285	\$ 47,660	\$ 2,727

See Notes to Unaudited Consolidated Financial Statements.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except share amounts)

	<u>September 30,</u> <u>2004</u>	<u>December 31,</u> <u>2003</u>
<u>(Unaudited)</u>		
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 517,631	\$ 520,979
Marketable securities	5,576	28,904
Prepaid expenses	8,239	18,745
Restricted investments	5,469	1,997
Other current assets	33,426	9,039
	<u>570,341</u>	<u>579,664</u>
Total current assets	570,341	579,664
Property and equipment, net	899,159	941,052
FCC license	83,654	83,654
Restricted investments, net of current portion	91,750	6,750
Deferred financing fees	8,577	5,704
Other long-term assets	37,082	493
	<u>1,690,563</u>	<u>1,617,317</u>
Total assets	\$ 1,690,563	\$ 1,617,317
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 116,758	\$ 65,919
Accrued interest	4,918	1,349
Deferred revenue	43,325	14,735
	<u>165,001</u>	<u>82,003</u>
Total current liabilities	165,001	82,003
Long-term debt	426,155	194,803
Deferred revenue, net of current portion	8,439	3,724
Other long-term liabilities	15,925	11,593
	<u>615,520</u>	<u>292,123</u>
Total liabilities	615,520	292,123
Stockholders' equity:		
Common stock, \$.001 par value: 2,500,000,000 shares authorized, 1,237,362,633 and 1,137,758,947 shares issued and outstanding at September 30, 2004 and December 31, 2003, respectively	1,237	1,138
Additional paid-in capital	2,722,421	2,525,135
Deferred compensation	(44,607)	(47,411)
Accumulated other comprehensive (loss) income	(25)	26
Accumulated deficit	(1,603,983)	(1,153,694)
	<u>1,075,043</u>	<u>1,325,194</u>
Total stockholders' equity	1,075,043	1,325,194
Total liabilities and stockholders' equity	\$ 1,690,563	\$ 1,617,317

See Notes to Unaudited Consolidated Financial Statements.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
(in thousands, except share amounts)  
(Unaudited)

	Common Stock		Additional Paid-In Capital	Deferred Compensation	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total
	Shares	Amount					
Balances at December 31, 2003	1,137,758,947	\$ 1,138	\$ 2,525,135	\$ (47,411)	\$ 26	\$ (1,153,694)	\$ 1,325,194
Net loss	—	—	—	—	—	(450,289)	(450,289)
Change in unrealized loss on available-for-sale securities	—	—	—	—	(51)	—	(51)
Total comprehensive loss							\$ (450,340)
Issuance of common stock to employees and employee benefit plans	909,825	1	1,463	—	—	—	1,464
Issuance of restricted stock to third parties	99,602	—	160	—	—	—	160
Compensation in connection with the issuance of stock options	—	—	329	—	—	—	329
Issuance of stock based awards	—	—	15,104	(15,104)	—	—	—
Cancellation of stock based awards	—	—	(598)	598	—	—	—
Amortization of deferred compensation	—	—	—	17,310	—	—	17,310
Equity granted to third parties	—	—	27,377	—	—	—	27,377
Issuance of equity to the NFL	15,173,070	15	40,952	—	—	—	40,967
Exercise of options, at exercise prices of \$0.83 to \$2.29 per share	5,919,393	6	6,158	—	—	—	6,164
Exchange of 3 1/2% Convertible Notes due 2008	56,409,853	56	86,512	—	—	—	86,568
Exercise of warrants, at exercise prices of \$0.92 and \$1.04 per share	21,091,943	21	19,829	—	—	—	19,850
Balances at September 30, 2004	1,237,362,633	\$ 1,237	\$ 2,722,421	\$ (44,607)	\$ (25)	\$ (1,603,983)	\$ 1,075,043

See Notes to Unaudited Consolidated Financial Statements.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)  
(Unaudited)

	For the Nine Months Ended September 30,	
	2004	2003
<b>Cash flows from operating activities:</b>		
Net loss	\$ (450,289)	\$ (78,437)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expense	71,082	71,229
Non-cash interest expense	21,168	2,735
Loss on disposal of assets	19	14,465
Non-cash gain associated with debt restructuring	—	(261,275)
Costs associated with debt restructuring	—	4,737
Expense for equity granted to third parties and employees	47,660	2,727
Other	—	(2)
Changes in operating assets and liabilities:		
Marketable securities	(92)	(1,185)
Prepaid expenses and other current assets	(7,869)	(328)
Other long-term assets	(3,406)	1
Accrued interest	3,848	16,921
Accounts payable and accrued expenses	44,721	9,132
Deferred revenue	33,306	5,349
Other long-term liabilities	4,332	3,194
Net cash used in operating activities	(235,520)	(210,737)
<b>Cash flows from investing activities:</b>		
Additions to property and equipment	(22,316)	(14,379)
Sale of property and equipment	237	—
Purchases of restricted investments	(90,104)	—
Purchases of available-for-sale securities	—	(24,826)
Maturities of available-for-sale securities	25,000	150,000
Net cash (used in) provided by investing activities	(87,183)	110,795
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of common stock, net	—	342,659
Proceeds from issuance of long-term debt, net	293,600	194,224
Proceeds from exercise of stock options	6,004	—
Proceeds from exercise of warrants	19,850	—
Costs associated with debt restructuring	—	(4,737)
Other	(99)	(71)
Net cash provided by financing activities	319,355	532,075
Net (decrease) increase in cash and cash equivalents	(3,348)	432,133
Cash and cash equivalents at the beginning of period	520,979	18,375
Cash and cash equivalents at the end of period	\$ 517,631	\$ 450,508

See Notes to Unaudited Consolidated Financial Statements.

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

**1. Business**

Sirius Satellite Radio Inc. broadcasts over 120 channels of digital-quality entertainment: 65 channels of 100% commercial-free music and over 55 channels of news, sports, talk, entertainment, traffic, weather and children's programming for an effective monthly subscription fee of \$11.15 for a three year plan and up to \$12.95 for a monthly plan. We offer discounts for pre-paid and long-term subscriptions as well as discounts for multiple subscriptions. Approximately 71% of the subscribers we acquired during the nine months ended September 30, 2004 purchased an annual subscription with an effective monthly subscription fee of \$11.08.

Since inception, we have used substantial resources to develop our satellite radio system. Our satellite radio system consists of our FCC license, satellite system, national broadcast studio, terrestrial repeater network and satellite telemetry, tracking and control facilities. On July 1, 2002, we launched our service nationwide.

As of September 30, 2004, we had 662,289 subscribers as compared with 261,061 subscribers as of December 31, 2003. Our subscriber totals include subscribers in promotional periods, subscribers that have prepaid, and active SIRIUS radios under our agreement with Hertz.

Our primary sources of revenue are subscription and activation fees. We also derive revenues from the sale of advertising on our non-music channels and from the direct sale of SIRIUS radios and accessories.

**2. Principles of Consolidation and Basis of Presentation**

The accompanying unaudited consolidated financial statements of Sirius Satellite Radio Inc. and its subsidiary have been prepared in accordance with U.S. generally accepted accounting principles and the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial reporting. Accordingly, they do not include all of the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements. All intercompany transactions have been eliminated in consolidation.

In presenting the unaudited consolidated financial statements, management makes estimates and assumptions that affect the amounts reported and related disclosures. Estimates, by their nature, are based on judgement and available information. Actual results could differ from those estimates. In the opinion of management, all normal recurring adjustments necessary for a fair presentation of the consolidated financial statements as of September 30, 2004 and December 31, 2003, and for the three and nine months ended September 30, 2004 and 2003, have been recorded. The results of operations for the three and nine months ended September 30, 2004 are not necessarily indicative of the results that may be expected for the full year. Our consolidated financial statements should be read together with our consolidated financial statements and the footnotes contained in our Annual Report on Form 10-K for the year ended December 31, 2003.

**3. Summary of Significant Accounting Policies**

***Revenue Recognition***

Revenue from subscribers consists of subscription fees, including revenue derived from our agreement with Hertz, and non-refundable activation fees. We recognize subscription fees as our service is provided. We record deferred revenue for prepaid subscription fees and amortize these prepayments to revenue ratably over the term of the subscription plan. Activation fees are recognized ratably over the estimated term of a subscriber relationship, currently 3.5 years. The estimated term of a subscriber relationship is based on market research and management's judgment and, if necessary, will be refined in the future as additional historical data becomes available. We record an estimate of mail-in rebates that will be paid by us directly to subscribers as a reduction to subscriber revenue in the period the subscriber activates our service. In subsequent periods, estimates are adjusted when necessary.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

We recognize revenues from the sale of advertising on our non-music channels as the advertising is broadcast. Agency fees are calculated based on a stated percentage applied to gross billing revenue for our advertising inventory and are reported as a reduction of advertising revenue.

Equipment revenue from the direct sale of SIRIUS radios and accessories is recognized upon shipment.

**Stock-Based Compensation**

In accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," we use the intrinsic value method to measure the compensation costs of stock-based awards granted to employees and members of our board of directors. Accordingly, we record stock compensation expense for stock-based awards granted to employees and members of our board of directors over the vesting period equal to the excess of the market price of the underlying common stock at the date of grant over the exercise price of the stock-based award. The intrinsic value of restricted stock units as of the date of grant is amortized to expense over the vesting period. These charges are recorded as a component of equity granted to third parties and employees in our accompanying statements of operations. To the extent any performance criteria are satisfied and the vesting of any stock options and/or restricted stock units accelerate, the unamortized stock compensation expense associated with these options or restricted stock units is also accelerated.

We account for stock-based awards granted to non-employees at fair value in accordance with Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation." In accordance with Emerging Issues Task Force 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services," we record expense based upon performance and the fair value of equity instruments issued to non-employees, other than non-employee members of our board of directors, at each reporting date. The final measurement date of equity instruments is the date that each performance commitment for such equity instrument is satisfied.

In accordance with Financial Accounting Standards Board ("FASB") Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation," we record compensation charges or benefits related to repriced stock options based on the market value of our common stock until the repriced stock options are exercised, forfeited or expire.

We have adopted the disclosure provisions of SFAS No. 148, "Accounting for Stock-Based Compensation—Transition and Disclosure—An Amendment of FASB Statement No. 123." The measure of fair value most often employed under SFAS No. 123, and used by us, is the Black-Scholes option valuation model ("Black-Scholes"). The Black-Scholes option valuation model was developed for use in estimating the fair market value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because our stock-based awards have characteristics significantly different from those of traded options and because changes in the subjective input assumptions can materially affect the fair market value estimate, in our opinion, the existing models do not necessarily provide a reliable single measure of the fair value of our stock-based awards. The following table illustrates the effect on net loss applicable to common stockholders and net loss per share applicable to common stockholders had stock-based compensation been recorded based on the fair value method under SFAS No. 123:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2004	2003	2004	2003
Net loss applicable to common stockholders—as reported	\$ (169,433)	\$ (106,689)	\$ (450,289)	\$ (166,645)
Stock compensation expense—included in equity granted to third parties and employees	4,967	2,280	17,828	2,716
Stock-based compensation—pro forma	(9,821)	(8,748)	(41,697)	(22,067)
Net loss applicable to common stockholders—pro forma	\$ (174,287)	\$ (113,157)	\$ (474,158)	\$ (185,996)
Net loss per share applicable to common stockholders:				
Basic and diluted—as reported	\$ (0.14)	\$ (0.11)	\$ (0.37)	\$ (0.22)
Basic and diluted—pro forma	\$ (0.14)	\$ (0.11)	\$ (0.39)	\$ (0.25)

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The pro forma stock-based compensation to employees was estimated using Black-Scholes with the following assumptions for each period:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2004	2003	2004	2003
Risk-free interest rate	4.12%	2.84%	3.72-4.12%	0.91-2.84%
Expected life of options—years	6.49	5.88	5.30-6.49	4.89-5.87
Expected stock price volatility	110%	118%	110-114%	115-118%
Expected dividend yield	N/A	N/A	N/A	N/A

***Debt Restructuring***

We recorded a gain of \$256,538 in connection with the restructuring of our long-term debt in March 2003. This gain represents the difference between the carrying value of our 15% Senior Secured Discount Notes due 2007, 14½% Senior Secured Notes due 2009, Lehman term loans and Loral term loans, including accrued interest, and the fair market value of the common stock issued, adjusted for unamortized debt issuance costs and direct costs associated with the restructuring. This gain is net of a loss on our 8¼% Convertible Subordinated Notes due 2009 exchanged in the restructuring. This loss represents the difference between the fair market value of the common stock issued in the exchange and the fair market value of the common stock which would have been issued under the original conversion ratio, including accrued interest, adjusted for unamortized debt issuance costs and direct costs associated with the restructuring.

***Preferred Stock Deemed Dividend***

We recorded a deemed dividend of \$79,510 in connection with the exchange in March 2003 of all outstanding shares of our preferred stock for shares of our common stock and warrants to purchase our common stock. This deemed dividend represents the difference between the fair market value of the common stock and warrants issued in exchange for all outstanding shares of our 9.2% Series A Junior Cumulative Convertible Preferred Stock, 9.2% Series B Junior Cumulative Convertible Preferred Stock and 9.2% Series D Junior Cumulative Convertible Preferred Stock and the fair market value of the common stock which would have been issued under the original conversion ratios, adjusted for unamortized issuance costs and direct costs associated with the exchange of the preferred stock.

***Net (Loss) Income Per Share***

Basic net (loss) income per share is based on the weighted average common shares outstanding during each reporting period. Diluted net (loss) income per share adjusts the weighted average for the potential dilution that could occur if common stock equivalents (convertible debt, warrants, stock options and restricted stock units) were exercised or converted into common stock. Common stock equivalents of approximately 194,000,000 and 196,000,000 for the three and nine months ended September 30, 2004, respectively, and 203,000,000 and 94,000,000 for the three and nine months ended September 30, 2003, respectively, were not considered in the calculation of diluted net loss per share as the effect would have been anti-dilutive.

***Comprehensive (Loss) Income***

We report comprehensive (loss) income in accordance with SFAS No. 130, "Reporting Comprehensive Income." SFAS No. 130 established a standard for reporting and displaying other comprehensive (loss) income and its components within financial statements. Unrealized gains and losses on available-for-sale securities are the only components of our other comprehensive (loss) income. Comprehensive loss for the three months ended September 30, 2004 and 2003 was \$169,432 and \$106,662, respectively. Comprehensive loss for the nine months ended September 30, 2004 and 2003 was \$450,340 and \$79,364, respectively.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Marketable Securities***

We account for marketable securities in accordance with the provisions of SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities." Marketable securities consist of U.S. government notes and U.S. government agency obligations and are classified as available-for-sale securities. Available-for-sale securities are carried at fair market value and unrealized gains and losses are included as a component of stockholders' equity. We recognized gains on the sale or maturity of marketable securities of \$76 for the nine months ended September 30, 2004, none of which were recognized during the three months ended September 30, 2004. We had unrealized holding (losses) gains on marketable securities of \$(25) and \$26 as of September 30, 2004 and December 31, 2003, respectively.

***Restricted Investments***

Restricted investments consist of fixed income securities, which are stated at amortized cost plus accrued interest. As of September 30, 2004 and December 31, 2003, long-term restricted investments were \$91,750 and \$6,750, respectively, and short-term restricted investments were \$5,469 and \$1,997, respectively.

Long-term restricted investments as of September 30, 2004 include \$85,000 deposited in escrow in connection with our National Football League ("NFL") agreement. This deposit is invested under our direction in a commercial money market fund and will be drawn by the NFL to pay the rights fees due for the 2006-2009 NFL seasons. Short-term restricted investments as of September 30, 2004 include \$5,103 deposited in escrow by us to secure our obligation to reimburse Ford for certain costs it will incur in connection with the introduction of our service as a factory option. This deposit is invested under our direction in a commercial money market account and will be drawn by Ford to fund tooling, facilities, non-recurring engineering costs, marketing and equipment subsidies. The remaining long-term and short-term restricted investments consist of certificates of deposit and United States government obligations pledged to secure our reimbursement obligations under letters of credit issued primarily for the benefit of the lessor of our headquarters.

***Recently Issued Accounting Pronouncements***

In September 2004, the Emerging Issues Task Force reached a consensus on Issue No. 04-8, "The Effect of Contingently Convertible Instruments on Diluted Earnings per Share" ("EITF No. 04-8"), which requires that diluted earnings per share include the dilutive effect of any contingently convertible debt securities regardless of whether the market price trigger had been satisfied during the period. We are required to adopt the provisions of EITF No. 04-8 as of December 31, 2004 and are also required to restate prior period diluted earnings per share for convertible debt securities that were outstanding during such periods and not ultimately settled in cash or modified prior to December 31, 2004. We do not have contingently convertible debt securities as of September 30, 2004. Therefore the adoption of EITF No. 04-8 will not have an impact on our consolidated results of operations and financial position.

***Reclassifications***

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

**4. Subscriber Revenue**

Subscriber revenue consists of subscription fees, non-refundable activation fees and the effects of mail-in rebates. We record an estimate of mail-in rebates that will be paid by us directly to subscribers as a reduction to subscriber revenue in the period the subscriber activates our service. In subsequent periods, estimates are adjusted when necessary.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Subscriber revenue consists of the following :

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2004	2003	2004	2003
Subscription fees	\$ 17,550	\$ 3,687	\$ 40,475	\$ 7,929
Activation fees	571	175	1,302	281
Effect of mail-in rebates	(96)	335	(1,600)	(430)
 Total subscriber revenue	 \$ 18,025	 \$ 4,197	 \$ 40,177	 \$ 7,780

**5. Supplemental Cash Flow Disclosures**

The following represents supplemental cash flow information:

	For the Nine Months Ended September 30,	
	2004	2003
Cash paid for interest	\$ 9,359	\$ 6,935
Supplemental non-cash operating activities:		
Common stock issued in satisfaction of accrued compensation	913	—
Supplemental non-cash investing and financing activities:		
Common stock issued to the NFL	40,967	—
Common stock issued in exchange of 3½% Convertible Notes due 2008, including accrued interest	86,568	—
Common stock issued in exchange of 15% Senior Secured Discount Notes due 2007, including accrued interest	—	145,067
Common stock issued in exchange of 14½% Senior Secured Notes due 2009, including accrued interest	—	105,294
Common stock issued in exchange of Lehman term loans, including accrued interest	—	85,902
Common stock issued in exchange of Loral term loans, including accrued interest	—	41,865
Common stock issued in exchange of 8¾% Convertible Subordinated Notes due 2009, including accrued interest	—	24,355
Common stock issued in exchange of 9.2% Series A and B Junior Cumulative Convertible Preferred Stock, including accrued dividends	—	304,847
Common stock issued in exchange of 9.2% Series D Junior Cumulative Convertible Preferred Stock, including accrued dividends	—	283,785
Warrants issued in exchange of 9.2% Series A, B and D Junior Cumulative Convertible Preferred Stock, including accrued dividends	—	30,731

**6. Accounts Payable and Accrued Expenses**

Our accounts payable and accrued expenses consists of the following:

	As of	As of
	September 30, 2004	December 31, 2003
Accounts payable	\$ 7,628	\$ 1,630
Accrued compensation	7,904	5,247
Accrued research and development costs	2,940	4,400
Accrued capital expenditures	6,180	2,469
Accrued subsidies and distribution costs	51,998	30,770
Accrued broadcast royalties	10,038	3,478
Other accrued expenses	30,070	17,925
 Total accounts payable and accrued expenses	 \$ 116,758	 \$ 65,919

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**7. Long-Term Debt**

Our long-term debt consists of the following:

	As of September 30, 2004	As of December 31, 2003
2½% Convertible Notes due 2009	\$ 300,000	\$ —
3½% Convertible Notes due 2008	67,250	136,250
8¾% Convertible Subordinated Notes due 2009	1,744	1,744
14½% Senior Secured Notes due 2009	27,961	27,609
15% Senior Secured Discount Notes due 2007	29,200	29,200
	<hr/>	<hr/>
Total long-term debt	\$ 426,155	\$ 194,803
	<hr/>	<hr/>

**2½% Convertible Notes due 2009**

In February 2004, we issued \$250,000 in aggregate principal amount of our 2½% Convertible Notes due 2009 pursuant to Rule 144A under the Securities Act, resulting in net proceeds of \$244,625. In March 2004, we issued an additional \$50,000 in aggregate principal amount of our 2½% Convertible Notes due 2009 pursuant to an option granted in connection with the initial offering of the notes, resulting in net proceeds of \$48,975. These notes are convertible, at the option of the holder, into shares of our common stock at any time at a conversion rate of 226.7574 shares of common stock for each \$1,000.00 principal amount, or \$4.41 per share of common stock, subject to certain adjustments. Our 2½% Convertible Notes due 2009 mature on February 15, 2009 and interest is payable semi-annually on February 15 and August 15 of each year. The obligations under our 2½% Convertible Notes due 2009 are not secured by any of our assets.

**3½% Convertible Notes due 2008**

In May 2003, we issued \$201,250 in aggregate principal amount of our 3½% Convertible Notes due 2008 in an underwritten public offering, resulting in net proceeds of \$194,224. These notes are convertible, at the option of the holder, into shares of our common stock at any time at a conversion rate of 724.6377 shares of common stock for each \$1,000.00 principal amount, or \$1.38 per share of common stock, subject to certain adjustments. Our 3½% Convertible Notes due 2008 mature on June 1, 2008 and interest is payable semi-annually on June 1 and December 1 of each year. The obligations under our 3½% Convertible Notes due 2008 are not secured by any of our assets.

In January 2004, we issued 56,409,853 shares of our common stock in exchange for \$69,000 in aggregate principal amount of our 3½% Convertible Notes due 2008, including accrued interest. In connection with these transactions, we incurred debt conversion costs of \$19,592. These costs are included in interest expense on our consolidated statements of operations for the nine months ended September 30, 2004. In December 2003, we issued 54,805,993 shares of our common stock in exchange for \$65,000 in aggregate principal amount of our 3½% Convertible Notes due 2008, including accrued interest. In connection with these transactions, we incurred debt conversion costs of \$19,439.

**8. Stockholders' Equity**

**Common Stock, par value \$.001 per share**

As of September 30, 2004, approximately 524,917,000 shares of our common stock were reserved for issuance in connection with outstanding convertible debt, warrants and incentive stock plans.

During the nine months ended September 30, 2004, employees exercised 5,919,393 stock options at exercise prices ranging from \$0.83 to \$2.29 per share, resulting in proceeds to us of \$6,164. Of this amount, \$6,004 had been collected as of September 30, 2004.

In January 2004, we signed a seven-year agreement with the NFL. We delivered to the NFL 15,173,070 shares of our common stock valued at \$40,967 upon execution of this agreement. These shares of common stock are subject to certain transfer restrictions which lapse over time. We recognized \$1,641 and \$1,933 of expense associated with these shares during the three and nine months ended September 30, 2004, respectively. Of the remaining \$39,034 in common stock value, \$5,852 and \$33,182 are included in other current assets and other long-term assets, respectively, on our consolidated balance sheets as of September 30, 2004.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

In November 2003, we sold 73,170,732 shares of our common stock in an underwritten public offering resulting in net proceeds of \$149,600.

In June 2003, we sold 86,250,000 shares of our common stock in an underwritten public offering resulting in net proceeds of \$144,897.

In March 2003, we sold 24,060,271 shares of our common stock to affiliates of Apollo Management, L.P. ("Apollo") for an aggregate of \$25,000; 24,060,271 shares of our common stock to affiliates of The Blackstone Group L.P. ("Blackstone") for an aggregate of \$25,000; and 163,609,837 shares of our common stock to affiliates of OppenheimerFunds, Inc. for an aggregate of \$150,000. We received net proceeds of \$197,112 in connection with these sales.

***Warrants***

In June 2004, we issued to DaimlerChrysler AG warrants to purchase an aggregate of up to 21,500,000 shares of our common stock at an exercise price of \$1.04 per share. These warrants vest based on the achievement of various performance milestones, including the volume thresholds contained in our agreement with DaimlerChrysler. These warrants replaced the warrants issued to DaimlerChrysler AG in October 2002. As of September 30, 2004, 750,000 of these warrants were vested and exercisable.

In February 2004, we announced an agreement with RadioShack Corporation ("RadioShack"), one of the nation's largest consumer electronics retailers, to distribute, market and sell SIRIUS radios. In connection with this agreement, we issued RadioShack warrants to purchase up to 10,000,000 shares of our common stock. All of these warrants have an exercise price of \$5.00 per share and vest and become exercisable if RadioShack achieves activation targets during the five-year term of the agreement.

In January 2004, we signed an agreement with Penske Automotive Group, Inc., United Auto Group, Inc., Penske Truck Leasing Co. L.P. and Penske Corporation (collectively, the "Penske companies"). In connection with this agreement, we agreed to issue the Penske companies warrants to purchase an aggregate of 38,000,000 shares of our common stock at an exercise price of \$2.392 per share. Two million of these warrants vested upon issuance and the balance of these warrants vest over time and upon achievement of certain milestones by the Penske companies.

In January 2004, we issued the NFL warrants to purchase 50,000,000 shares of our common stock at an exercise price of \$2.50 per share. Of these warrants, 16,666,665 vest upon the delivery to us of media assets by the NFL and its member clubs, and 33,333,335 of these warrants will be earned by the NFL or its member clubs as we acquire subscribers which are directly trackable through their efforts.

During the nine months ended September 30, 2004, we issued warrants to purchase 9,425,000 shares of our common stock at exercise prices of \$3.00 to \$3.21 per share to other third parties as part of distribution and programming arrangements. These warrants vest over time and upon achievement of certain milestones.

In March 2003, we also issued warrants to purchase 45,416,690 shares of our common stock in exchange for all of our outstanding 9.2% Series A Junior Cumulative Convertible Preferred Stock and 9.2% Series B Junior Cumulative Convertible Preferred Stock held by Apollo. Warrants to purchase 27,250,013 shares of our common stock have an exercise price of \$1.04 per share, and warrants to purchase 18,166,677 shares of our common stock have an exercise price of \$0.92 per share. These warrants are exercisable and expire on March 7, 2005.

In March 2003, we issued warrants to purchase 42,160,424 shares of our common stock in exchange for all of our outstanding 9.2% Series D Junior Cumulative Convertible Preferred Stock held by Blackstone. Warrants to purchase 25,296,255 shares of our common stock had an exercise price of \$1.04 per share, and warrants to purchase 16,864,169 shares of our common stock had an exercise price of \$0.92 per share. Blackstone exercised all of its warrants prior to their expiration on September 7, 2004 in a series of transactions that included cashless exercises and exercises for cash. In connection with these transactions, we issued 32,623,748 shares of our common stock and received \$19,850 in proceeds.

We recognized expense of \$9,822 and \$5 in connection with warrants for the three months ended September 30, 2004 and 2003, respectively, and \$25,200 and \$11 for the nine months ended September 30, 2004 and 2003, respectively.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**9. Benefit Plans**

In February 1994, we adopted our 1994 Stock Option Plan and our 1994 Directors' Nonqualified Stock Option Plan. In June 1999, we adopted the Sirius Satellite Radio 1999 Long-Term Stock Incentive Plan. In January 2003, our board of directors adopted the Sirius Satellite Radio 2003 Long-Term Stock Incentive Plan (the "2003 Plan"), and on March 4, 2003 our stockholders approved this plan. On May 25, 2004, our stockholders approved an amendment to the 2003 Plan to include members of our board of directors as eligible participants. Employees, consultants and members of our board of directors are eligible to receive awards under the 2003 Plan. As of September 30, 2004, approximately 126,327,000 shares of our common stock were available for grant under these plans. Approximately 95,651,000 stock options, shares of restricted stock and restricted stock units were outstanding as of September 30, 2004.

The 2003 Plan provides for the grant of stock options, restricted stock, restricted stock units and other stock-based awards that the compensation committee of our board of directors may deem appropriate. Vesting and other terms of stock-based awards are set forth in the agreements with the individuals receiving the awards. Stock-based awards granted under the 2003 Plan generally vest over three to five years from the date of grant and expire in ten years.

***Stock Options***

During the nine months ended September 30, 2004, we granted 5,525,908 non-qualified stock options to third parties with an average exercise price of \$2.77 per share. These options vest over time and as performance criteria are met. We recognized expense of \$938 and \$2,186 for the three and nine months ended September 30, 2004 respectively, associated with these options.

In 2003, we granted 47,707,250 non-qualified stock options to employees and consultants with an exercise price of \$1.04 per share. Since the exercise price of the stock options granted to employees was less than the fair market value of the underlying common stock on the date of grant, we recorded deferred compensation, a component of stockholders' equity, of \$30,299 in 2003. This deferred compensation is amortized to equity granted to third parties and employees over the vesting period. Of this amount, we expensed \$1,884 and \$7,739 for the three and nine months ended September 30, 2004, respectively, and \$1,264 for each of the three and nine months ended September 30, 2003. Approximately 42% of these options vest ratably over three years and 33% vest in July 2008 with acceleration to March 2005 if performance criteria are satisfied in 2004. Of these options, 25% vested in March 2004 upon the satisfaction of performance criteria. The nine months ended September 30, 2004 included \$2,647 of stock compensation expense related to the accelerated vesting of stock options during the first quarter of 2004, due to the satisfaction of certain performance criteria in 2003. Employees exercised 5,715,333 of these options during the nine months ended September 30, 2004, resulting in proceeds to us of \$5,944.

***Restricted Stock Units***

During the nine months ended September 30, 2004, we granted 3,075,000 restricted stock units, with a grant date fair value of \$3.14 per share, to employees. Of these restricted stock units, 391,000 vested immediately upon grant. The remaining restricted stock units vest over time or on a specific date in future periods with acceleration to earlier periods if performance criteria are satisfied. We also granted 1,286,316 restricted stock units, with a weighted average grant date fair value of \$2.92 per share, to employees. Approximately 624,000 of these restricted stock units vest in February 2005. The remaining restricted stock units vest in July 2008 with acceleration to February 2005 if certain performance criteria are met for the year ending December 31, 2004. Each restricted stock unit entitles the holder to receive one share of our common stock upon vesting.

In 2003, we granted 16,860,000 restricted stock units, with a weighted average grant date fair value of \$1.65 per share, to employees. Each restricted stock unit entitles the holder to receive one share of common stock upon vesting in July 2008 with acceleration to March 2006 if performance criteria are satisfied with respect to the year ending December 31, 2005.

We recorded deferred compensation of \$37,466 in connection with restricted stock units granted to employees, which is being amortized to expense over the vesting period and is recorded as a component of equity granted to third parties and employees in the accompanying statements of operations. For the three and nine months ended September 30, 2004, we recognized stock compensation expense associated with these restricted stock units

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

of \$2,835 and \$9,209, respectively. For each of the three and nine months ended September 30, 2003, we recognized stock compensation expense associated with these restricted stock units of \$864.

During the nine months ended September 30, 2004, we granted 478,868 restricted stock units to third parties with a grant date fair value of \$3.09 per share. These restricted stock units vest over time. We recognized expense of \$264 and \$352 for the three and nine months ended September 30, 2004, respectively, associated with these restricted stock units.

**10. Income Taxes**

We recorded income tax expense of \$560 and \$3,641 for the three and nine months ended September 30, 2004, respectively. Such expense represents the recognition of a deferred tax liability related to the difference in accounting for our FCC license, which is amortized over 15 years for tax purposes but not amortized for book purposes.

**11. Commitments and Contingencies**

We have entered into various contracts, which have resulted in significant cash obligations in future periods. The following table summarizes our contractual cash commitments as of September 30, 2004:

	Remaining 2004	2005	2006	2007	2008	Thereafter	Total
Lease obligations	\$ 1,764	\$ 7,930	\$ 7,379	\$ 6,916	\$ 5,506	\$ 30,861	\$ 60,356
Satellite and transmission	789	3,155	3,155	3,155	3,155	18,182	31,591
Programming and content	4,396	25,326	30,420	8,408	4,811	79,975	153,336
Customer service and billing	360	4,625	3,310	3,032	—	—	11,327
Marketing and distribution	28,735	54,355	20,186	8,717	4,177	13,950	130,120
Chip set development and production	940	11,548	10,048	—	—	—	22,536
<b>Total contractual cash commitments</b>	<b>\$ 36,984</b>	<b>\$ 106,939</b>	<b>\$ 74,498</b>	<b>\$ 30,228</b>	<b>\$ 17,649</b>	<b>\$ 142,968</b>	<b>\$ 409,266</b>

***Operating Leases***

We have entered into operating leases related to our national broadcast studio, office space, terrestrial repeater sites and equipment.

***Satellite and Transmission***

We have entered into an agreement with a provider of satellite services to operate our off-site satellite telemetry, tracking and control facilities.

***Programming and Content***

We have entered into agreements with licensors of music and non-music programming and, in certain instances, are obligated to pay license fees, and guarantee minimum advertising revenue share. In addition, we have agreements with various rights organizations pursuant to which we pay royalties for public performances of music.

***Customer Service and Billing***

We have entered into agreements with third parties to provide customer service, billing and subscriber management services.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***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. In addition, certain programming and content agreements require us to purchase advertising on properties owned or controlled by the licensors. We have also agreed to reimburse automakers for certain engineering and development costs associated with the incorporation of SIRIUS radios into vehicles they manufacture.

***Chip Set Development and Production***

We have entered into agreements with Agere Systems, Inc. ("Agere") and STMicroelectronics ("ST") to produce chip sets for use in SIRIUS radios. Our agreement with ST requires that we purchase a minimum quantity of chip sets during a three-year period and pay for the development of the chip sets as milestones are satisfied. Our agreements with Agere also require us to pay for the development of our chip sets and to license us intellectual property related to our chip sets.

***Joint Development Agreement***

Under the terms of a joint development agreement with XM Satellite Radio, the other holder of a FCC satellite radio license, each party is obligated to fund one half of the development cost for a unified standard for satellite radios. The costs related to the joint development agreement are being expensed as incurred to research and development expense. We are currently unable to determine the expenditures necessary to complete this process, but they may be significant.

***Other Commitments***

In addition to the contractual cash commitments described above, we have also entered into agreements with automakers, radio manufacturers and others that include per-radio and per-subscriber required payments and revenue share arrangements. These future costs are dependent upon many factors and are difficult to anticipate; however, these costs may be substantial. We may enter into additional programming, marketing and other agreements that contain provisions similar to our current agreements.

As of September 30, 2004, we have not entered into any off-balance sheet arrangements or transactions.

***Risks and Uncertainties***

Agere is currently the sole supplier of chip sets to our radio manufacturers. ST is currently developing our next generation chip set. Further changes in chip set suppliers could cause a delay in manufacturing and a possible loss of sales, which would adversely affect our operating results.

A significant number of SIRIUS radios are produced by a single vendor. In the event that the supply of these SIRIUS radios were delayed or reduced, the ability of manufacturers to ship SIRIUS radios in the desired quantities and in a timely manner would adversely affect our operating results.

**12. Subsequent Events**

***Howard Stern***

In October 2004, we entered into an agreement with Howard Stern and his production company. Pursuant to the agreement, commencing on January 1, 2006, Stern will move his radio show to our service from terrestrial radio as part of a channel created by Stern. We also expect Stern to develop and produce one or more additional channels of programming for us during the term of the agreement. The agreement will expire on December 31, 2010.

Our financial obligations under the agreement consist of both fixed and incentive payments. These obligations are payable partly in cash and partly in shares of our common stock. Our aggregate fixed obligations under the agreement are approximately \$100,000 per year. These costs include production and operating costs for the show, including compensation of show cast and staff, overhead, construction costs for a dedicated studio, a budget for the development of additional programming and marketing concepts, and payments to Stern and his agent.

**SIRIUS SATELLITE RADIO INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

We are also obligated to make substantial stock-based incentive payments under the agreement if we significantly exceed agreed upon year-end subscriber targets during the term of the agreement, or acquire material amounts of subscribers during the term directly and trackably through Stern's efforts. In addition, upon reaching an agreed upon number of subscribers, we will share a portion of the revenue we derive directly from advertising on the Stern channels, and the revenue we derive from subscribers acquired during the term directly and trackably through Stern's efforts.

***Offerings***

In October 2004, we sold 25,000,000 shares of our common stock in an underwritten public offering resulting in net proceeds of \$96,250. Concurrent with this common stock offering, we issued \$230,000 in aggregate principal amount of our 3<sup>1</sup>/<sub>4</sub> % Convertible Notes due 2011. We realized net proceeds of \$225,112 from the sale of these notes. These notes are convertible, at the option of the holder, into shares of our common stock at any time at a conversion rate of 188.6792 shares of common stock for each \$1,000.00 principal amount, or \$5.30 per share of common stock, subject to certain adjustments. Our 3<sup>1</sup>/<sub>4</sub>% Convertible Notes due 2011 mature on October 15, 2011 and interest is payable semi-annually on April 15 and October 15 of each year, commencing April 15, 2005. The obligations under our 3<sup>1</sup>/<sub>4</sub>% Convertible Notes due 2011 are not secured by any of our assets.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**  
(All dollar amounts are in thousands, unless otherwise stated)

**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 Quarterly Report on Form 10-Q 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," "intends," "plans," "projection" and "outlook." Any forward-looking statements are qualified in their entirety by reference to the factors discussed throughout our Annual Report on Form 10-K for the year ended December 31, 2003 (the "Form 10-K") and in other reports and documents published by us from time to time, particularly the risk factors described under "Business – Risk Factors" in Part I of the 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:

- our competitive position; XM Satellite Radio, the other satellite radio service provider in the United States, currently has substantially more subscribers than us and may have certain competitive advantages;
- our dependence upon third parties to manufacture, distribute, market and sell SIRIUS radios and components for those radios;
- changes to our business plan or strategy, which could include significant additions to our programming, infrastructure or distribution; and
- the useful life of our satellites, which have experienced circuit failures on their solar arrays and other component failures, and are not insured.

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.

**Executive Summary**

Sirius Satellite Radio Inc. broadcasts over 120 channels of digital-quality entertainment: 65 channels of 100% commercial-free music and over 55 channels of news, sports, talk, entertainment, traffic, weather and children's programming for an effective monthly subscription fee of \$11.15 for a three year plan and up to \$12.95 for a monthly plan. We offer discounts for pre-paid and long-term subscriptions as well as discounts for multiple subscriptions. Approximately 71% of the subscribers we acquired during the nine months ended September 30, 2004 purchased an annual subscription with an effective monthly subscription fee of \$11.08.

Since inception, we have used substantial resources to develop our satellite radio system. Our satellite radio system consists of our FCC license, satellite system, national broadcast studio, terrestrial repeater network and satellite telemetry, tracking and control facilities. On July 1, 2002, we launched our service nationwide.

Our primary source of revenue is subscription fees, with most of our new customers subscribing to SIRIUS on an annual basis. We also derive revenue from activation fees, the sale of advertising on our non-music channels and from the direct sale of SIRIUS radios and accessories.

Our cost of services includes satellite and transmission, programming and content, customer service and billing, and costs associated with the sale of equipment. Satellite and transmission expenses consist primarily of in-orbit satellite insurance and costs associated with the operation and maintenance of our satellite tracking, telemetry and control system, terrestrial repeater network and national broadcast studio. Programming and content expenses include costs to create, produce and acquire content, on-air talent costs and broadcast royalties. Customer service and billing expenses include costs associated with the operation of our customer service center and subscriber management system.

As of September 30, 2004, we had 662,289 subscribers as compared with 261,061 subscribers as of December 31, 2003. Our subscriber totals include subscribers in promotional periods, subscribers that have prepaid, and active SIRIUS radios under our agreement with Hertz.

The following tables contain a breakdown of our subscribers and other key metrics for the last five consecutive quarters, which we use to measure operating performance:

	As of				
	September 30, 2004	June 30, 2004	March 31, 2004	December 31, 2003	September 30, 2003
Retail	448,328	344,349	263,164	197,650	110,821
OEM and special markets	186,804	111,145	63,493	39,400	15,358
Hertz	27,157	24,847	25,006	24,011	23,433
Total subscribers	662,289	480,341	351,663	261,061	149,612

	For the Three Months Ended				
	September 30, 2004	June 30, 2004	March 31, 2004	December 31, 2003	September 30, 2003
Gross subscriber additions – including Hertz subscribers	207,181	149,164	108,732	125,898	49,631
Deactivated subscribers	25,233	20,486	18,130	14,449	5,205
Average monthly churn <sup>(1)</sup>	1.5%	1.6%	2.0%	2.3%	1.4%
ARPU – excluding effects of Hertz subscribers and mail-in rebates <sup>(2)</sup>	\$ 10.92	\$ 11.19	\$ 11.68	\$ 11.99	\$ 12.09
Subscriber acquisition costs per gross activation <sup>(3)</sup>	\$ 229	\$ 234	\$ 248	\$ 222	\$ 522
Loss from operations, as reported	\$ (167,237)	\$ (132,985)	\$ (119,508)	\$ (125,117)	\$ (103,487)
Depreciation expense	23,811	23,583	23,688	24,124	23,666
Equity granted to third parties and employees	17,752	12,083	17,824	9,356	2,285
Adjusted loss from operations	\$ (125,674)	\$ (97,319)	\$ (77,996)	\$ (91,637)	\$ (77,536)

(1) Average monthly churn represents the number of deactivated subscribers divided by average quarterly subscribers.

(2) Average monthly revenue per subscriber, or ARPU, is derived from total subscriber revenue over the daily weighted average number of subscribers for the period.

(3) Subscriber acquisition costs per gross activation is derived from total subscriber acquisition costs and the negative margins from the direct sale of SIRIUS radios and accessories over the number of gross activations for the period.

Average monthly churn, ARPU, subscriber acquisition costs per gross activation and adjusted loss from operations are not measures of financial performance under U.S. generally accepted accounting principles and are used by us as a measure of operating performance.

SIRIUS radios are primarily distributed through automakers and retailers. We have agreements with Ford Motor Company (“Ford”), DaimlerChrysler Corporation (“DaimlerChrysler”), BMW of North America, LLC, Nissan North America, Inc., Volkswagen of America, Inc. and Porsche Cars North America, Inc. that contemplate the manufacture and sale of vehicles that include SIRIUS radios. In the autosound aftermarket, SIRIUS radios are available for sale at national and regional retailers, including Best Buy, Circuit City, RadioShack, Walmart, Ultimate Electronics, Tweeter Home Entertainment Group, Crutchfield, Good Guys, Office Depot, Target, Kmart and DISH Network outlets. On September 30, 2004, SIRIUS radios were available at over 20,000 retail locations. SIRIUS radios are also offered to renters of Hertz vehicles at approximately 53 airport locations. We believe our ability to attract and retain subscribers depends in large part on creating and sustaining distribution channels for SIRIUS radios, both in the retail aftermarket and with automakers, and on the quality and entertainment value of our programming.

During 2003, we improved our financial position significantly through the issuance of debt and equity securities. We issued 371,151,111 shares of our common stock for net proceeds of \$494,497 and \$201,250 in aggregate principal amount of our 3½% Convertible Notes due 2008 for net proceeds of \$194,224. We also restructured our debt and equity capitalization, which resulted in the elimination of 91% of our then outstanding debt. The increase in our overall liquidity, reduction of the average interest rate on our outstanding debt from 12.6% prior to the restructuring to 6.8% at December 31, 2003, and reduction of our overall leverage better positioned us to meet our business plan.

During the nine months ended September 30, 2004, we issued \$300,000 in aggregate principal amount of our 2½% Convertible Notes due 2009, resulting in net proceeds of \$293,600 and further reducing our average interest rate to 4.3%. In October 2004, we raised additional capital through the offering of 25,000,000 shares of our common stock and the issuance of \$230,000 in aggregate principal amount of our 3¼% Convertible Notes due 2011 resulting in net proceeds of approximately \$321,000. We intend to use the net proceeds from these offerings for general corporate purposes, including investments in programming, infrastructure and/or distribution arrangements.

We have incurred operating losses since inception and expect to continue to incur operating losses until the number of our subscribers increases substantially and we develop cash flows sufficient to cover our operating costs. We also have significant commitments over the next several years, including subsidies and distribution costs, programming costs, repayment of long-term debt and lease payments, as further described below under the heading “Contractual Cash Commitments.” Our ability to become profitable also depends upon other factors identified below under the heading “Liquidity and Capital Resources.”

In October 2004, we entered into an agreement with Howard Stern and his production company. Pursuant to the agreement, commencing on January 1, 2006, Stern will move his radio show to our service from terrestrial radio as part of a channel created by Stern.

We believe that our agreement with Stern will have a material positive benefit to our business, including a positive impact on consumer awareness; number of subscribers; churn; and partner relations. However, in the event we generate substantially fewer than 1,000,000 subscribers in excess of our current plans as a result of the addition of Stern to our programming line-up, the fixed obligations under the agreement with Stern could have a material negative impact on our financial condition and results of operations.

We have invested significant resources to document and analyze our system of internal controls and we are continuing our evaluation of such internal controls versus the standards adopted by the Public Company Accounting Oversight Board. In the fourth quarter of 2004, we began implementing a new subscriber management system, and are in the process of documenting, evaluating and testing the internal controls for that system. We expect, but we cannot be certain at this time, that our efforts will be successful in allowing management or our auditors to complete the procedures, certifications and attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002 in connection with our annual reports for the fiscal year ended December 31, 2004.

## Results of Operations

### Three Months Ended September 30, 2004 Compared with Three Months Ended September 30, 2003

*Total Revenue.* Total revenue increased \$14,858 to \$19,116 for the three months ended September 30, 2004 from \$4,258 for the three months ended September 30, 2003. Total revenue for the three months ended September 30, 2004 included subscriber revenue of \$18,025, consisting of subscription and non-refundable activation fees, net advertising revenue of \$249, equipment revenue of \$823 and revenue from other sources of \$19. Total revenue for the three months ended September 30, 2003 included subscriber revenue of \$4,197, net advertising revenue of \$39 and revenue from other sources of \$22.

*Subscriber Revenue.* The increase in subscriber revenue of \$13,828 was attributable to the growth of subscribers to our service. We added 181,948 net new subscribers during the three months ended September 30, 2004. We added 44,426 net new subscribers during the three months ended September 30, 2003. Subscriber revenue for the three months ended September 30, 2004 included subscription fees of \$17,550 and activation fees of \$571, which was offset by \$96 of costs associated with mail-in rebates. Subscriber revenue for the three months ended September 30, 2003 included subscription fees of \$3,687, activation fees of \$175 and a \$335 adjustment to reflect the actual take-rate of the rebate offer which expired during the third quarter of 2003.

Future subscriber revenue will be dependent upon, among other things, the growth of our subscriber base, discounts and mail-in rebates offered to subscribers and the identification of additional revenue streams from subscribers.

*Average monthly revenue per subscriber, or ARPU.* Set forth below is a chart showing the calculation of ARPU and the average monthly revenue per Hertz subscriber:

	For the Three Months Ended September 30,	
	2004	2003
Average monthly revenue per subscriber	\$ 10.92	\$ 12.09
Effects of Hertz subscribers	(0.18)	(1.78)
ARPU before effects of mail-in rebates	10.74	10.31
Effects of mail-in rebates	(0.05)	0.89
Reported ARPU	\$ 10.69	\$ 11.20
Average monthly revenue per Hertz subscriber	\$ 7.19	\$ 2.12

The effects of mail-in rebates had a positive impact to ARPU for the three months ended September 30, 2003 due to a \$335 adjustment to reflect the actual take-rate of the rebate offer which expired during the third quarter of 2003. Lower average monthly revenue per subscriber and reported ARPU for the three months ended September 30, 2004 as compared with the three months ended September 30, 2003 was a result of promotional activity, which ended in July 2004, providing an effective first year price of \$9.99 per month for new subscribers, our \$6.99 multi-receiver plan, and the popularity of our annual and longer subscription plans.

Future ARPU will be dependent upon the amount and timing of subscriber discounts, mail-in rebates and the identification of additional revenue streams from subscribers.

*Satellite and Transmission.* Satellite and transmission expenses consist of in-orbit satellite insurance and costs associated with the operation and maintenance of our satellite tracking, telemetry and control system, terrestrial repeater network and national broadcast studio.

Satellite and transmission expenses decreased \$366 to \$7,620 for the three months ended September 30, 2004 from \$7,986 for the three months ended September 30, 2003. The decrease in satellite and transmission expenses was primarily attributable to a \$1,464 reduction in satellite insurance costs. Effective August 2, 2004, we discontinued our in-orbit satellite insurance. This decision was made after a review of the health of our satellite constellation; the exclusions from coverage contained in the available insurance; the costs of the available insurance; the practices of other satellite companies as to in-orbit insurance; and the likelihood that a catastrophic failure of one or more of our satellites would be covered by the available insurance or fall within a policy exclusion. Such decrease was offset primarily by increased costs associated with additions to our terrestrial repeater network and the

maintenance of existing sites. As of September 30, 2004, we had 135 repeaters in operation as compared with 113 as of September 30, 2003. We also incurred additional costs associated with the operation of the satellite uplink facility we purchased in March 2004, the use of security software to prevent the theft of our service, and additions to our personnel.

Increases in satellite and transmission expenses will be primarily attributable to the addition of new sites, and maintenance to existing sites, in our terrestrial repeater network.

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

Programming and content expenses increased \$11,379 to \$18,877 for the three months ended September 30, 2004 from \$7,498 for the three months ended September 30, 2003. The increase in programming and content expenses was primarily attributable to an increase of \$10,237 for costs to create, produce and acquire content, including personnel related costs, consultant costs, license fees, and advertising revenue share. Of the \$10,237 increase, \$6,496 was related to our agreement with the National Football League ("NFL"). The rights fees under this agreement include \$188,000 in cash payments, in addition to the \$40,967 value of the 15,173,070 shares of our common stock granted to the NFL upon signing the agreement which is amortized to equity granted to third parties and employees. Of the \$188,000 rights fee obligation, \$159,200 has been allocated as programming and content expense and the remaining \$28,800 has been allocated as a sponsorship cost. The \$159,200 is being amortized to programming and content expense over the seven month NFL season from August through February. The sponsorship component is amortized to sales and marketing expense over each contract year from March through February. The remaining increase in content related costs was primarily a result of other programming agreements associated with the expansion of our programming line-up. We also incurred additional on-air talent costs of \$576 primarily due to the expansion of our programming line-up and an increase of \$566 in broadcast royalties as a result of an increase in our subscriber base.

We anticipate that our programming and content expenses will increase significantly as we continue to develop and enhance our channels. Beginning in 2006, our agreement with Stern will significantly increase our programming and content expense. We regularly evaluate new programming opportunities and may choose to acquire new content in the future at substantial costs.

*Customer Service and Billing.* Customer service and billing expenses include costs associated with the operation of our customer service center and subscriber management system.

Customer service and billing expenses increased \$3,093 to \$5,329 for the three months ended September 30, 2004 from \$2,236 for the three months ended September 30, 2003. The increase in expense was primarily attributable to an increase of \$1,638 in customer service representative and telecommunication costs to support the growth of our subscriber base; \$527 in credit card fees, also as a result of the growth of our subscriber base; and \$655 in subscriber management system operation and maintenance costs. The remaining increase in customer service and billing costs was primarily a result of hiring additional personnel to support our continued growth and the operation of our subscriber management system. Customer service and billing expenses increased 138% compared with an increase in our end of period subscribers of 343% as of September 30, 2004 as compared with September 30, 2003.

We expect our customer care and billing expenses to increase and our costs per subscriber to decrease as our subscriber base grows.

*Sales and Marketing.* Sales and marketing expenses include advertising media and production costs and distribution costs. Advertising media and production costs primarily include promotional events, sponsorships, media, advertising production and market research. Distribution costs primarily include the costs of residuals, market development funds, revenue share and in-store merchandising.

Sales and marketing expenses increased \$16,898 to \$42,500 for the three months ended September 30, 2004 from \$25,602 for the three months ended September 30, 2003. Advertising media and production costs increased \$9,378 for the three months ended September 30, 2004 as compared with the three months ended

September 30, 2003, primarily as a result of costs to launch our SIRIUS NFL Sunday Drive programming. Such costs included costs to create commercials and the amortization of the \$28,800 in rights fees allocated to sales and marketing expense as a sponsorship cost over the seven-year term of the NFL agreement. Distribution costs increased \$4,688 for the three months ended September 30, 2004 as compared with September 30, 2003 primarily as a result of costs associated with the continued rollout of our sales efforts with RadioShack and variable expenses for residuals and revenue share as a result of increases in sales and activations. The remaining increase was attributable to increased compensation and related costs for additions to our sales and marketing headcount and consulting fees.

We expect sales and marketing expenses to increase in the future as we continue to build brand awareness through national advertising and promotional activities and expand the distribution of SIRIUS radios.

*Subscriber Acquisition Costs.* Subscriber acquisition costs include subsidies paid to radio manufacturers, automakers, retailers and chip set manufacturers and commissions paid to retailers and automakers as incentives to purchase, install and activate SIRIUS radios. The majority of subscriber acquisition costs are incurred in advance of acquiring a subscriber. Subscriber acquisition costs do not include advertising, loyalty payments to distributors and dealers of SIRIUS radios and revenue share payments to automakers and manufacturers of SIRIUS radios. Subscriber acquisition costs also do not include amounts capitalized in connection with our agreement with Hertz, as we retain ownership of the SIRIUS radios used by Hertz.

Subscriber acquisition costs increased \$21,178 to \$47,066 for the three months ended September 30, 2004 from \$25,888 for the three months ended September 30, 2003. The increase in subscriber acquisition costs was attributable to subsidies for higher shipments of SIRIUS radios and chip sets to accommodate the growth of our subscriber base and commissions resulting from the increase in gross activations. We had 207,181 gross activations in the three months ended September 30, 2004 which was 317% higher than the gross activations of 49,631 in the three months ended September 30, 2003.

Subscriber acquisition costs per gross activation was \$229 and \$522 for the three months ended September 30, 2004 and 2003, respectively. The decline in subscriber acquisition costs per gross activation was primarily attributable to the 317% increase in gross activations as compared with the 82% increase in total subscriber acquisition costs and the reduction in subsidy rates as a result of the introduction of new generation product.

We expect to have significantly higher subscriber acquisition costs in the fourth quarter of 2004. However, our subscriber acquisition costs per gross activation is anticipated to decline as the percentage increase in fourth quarter gross activations is expected to be substantially higher than the percentage increase in subscriber acquisition costs.

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

General and administrative expenses increased \$4,652 to \$11,808 for the three months ended September 30, 2004 from \$7,156 for the three months ended September 30, 2003. The increase was primarily a result of consulting fees, of which approximately \$1,100 were non-recurring, approximately \$1,400 in compensation and related costs for additions to our general and administrative headcount, and \$826 in higher rent and occupancy costs for office space.

*Research and Development.* Research and development expenses include the costs to develop our future generation of chip sets and new products and costs associated with the incorporation of SIRIUS radios into vehicles manufactured by automakers.

Research and development expenses increased \$5,016 to \$10,444 for the three months ended September 30, 2004 from \$5,428 for the three months ended September 30, 2003. The increase in research and development expenses was primarily attributable to an increase in the incorporation of SIRIUS radios into vehicles manufactured by automakers, our joint development agreement with XM Satellite Radio, and compensation and consulting costs to support the continued development of future generation chip sets and products. Specifically, in the third quarter of 2004, our research and development expenses increased as a result of non-recurring engineering costs associated with tooling and manufacturing upgrades at DaimlerChrysler and Ford's plan to factory install SIRIUS radios in up to twenty 2006 and 2007 model vehicles. Such increase in expense was offset by a decrease in costs related to the development of our chip sets.

We expect our research and development expense to increase in future periods as automakers continue their efforts to incorporate SIRIUS radios across a broad range of their vehicles and as we develop future generations of chip sets and new products.

*Equity Granted to Third Parties and Employees.* Equity granted to third parties and employees includes the costs associated with options, warrants, restricted stock and restricted stock units granted to partners, pursuant to programming, sales and marketing and distribution agreements, employees, members of our board of directors, consultants and employee benefit plans.

Expense associated with equity granted to third parties increased \$12,780 to \$12,785 for the three months ended September 30, 2004 from \$5 for the three months ended September 30, 2003. The expense for the three months ended September 30, 2004 included \$3,686 primarily for vesting events associated with various programming arrangements, \$1,641 of costs associated with the 15,173,070 shares of our common stock granted to the NFL upon signing the agreement, and \$1,368 related to warrants for media assets provided to us under the NFL agreement. The remaining expense for the three months ended September 30, 2004 was accrued based on certain partners' performance toward achieving milestones and included the effect of price changes in our common stock.

Expense associated with equity granted to employees increased \$2,687 to \$4,967 for the three months ended September 30, 2004 from \$2,280 for the three months ended September 30, 2003. The expense recognized for the three months ended September 30, 2004 and 2003 related to the issuance of stock-based awards to employees and consultants, which included a combination of stock options with exercise prices below fair market value at the date of grant and restricted stock units. The difference between the exercise price and the market price on the date of grant was recorded to expense over the applicable vesting period. The increase in expense was related to a full quarter impact of expense for the three months ended September 30, 2004 in connection with options and restricted stock units granted during the third quarter of 2003.

Future expense associated with equity granted to third parties and employees is contingent upon a number of factors, including the price of our common stock, vesting provisions and the timing as to when certain performance criteria are met, and could materially change.

*Interest Expense.* Interest expense increased \$724 to \$5,267 for the three months ended September 30, 2004 from \$4,543 for the three months ended September 30, 2003. The increase in interest expense was the result of the issuance of our 2½% Convertible Notes due 2009 in the first quarter of 2004.

*Other Income.* Other income for the three months ended September 30, 2004 was primarily related to a legal settlement in our favor of \$1,333.

*Income Tax Expense.* We recorded income tax expense of \$560 for the three months ended September 30, 2004. This expense represents the recognition of a deferred tax liability related to the difference in accounting for our FCC license, which is amortized over 15 years for tax purposes but not amortized for book purposes.

#### ***Nine Months Ended September 30, 2004 Compared with Nine Months Ended September 30, 2003***

*Total Revenue.* Total revenue increased \$33,715 to \$41,637 for the nine months ended September 30, 2004 from \$7,922 for the nine months ended September 30, 2003. Total revenue for the nine months ended September 30, 2004 included subscriber revenue of \$40,177, consisting of subscription and non-refundable activation fees, net advertising revenue of \$399, equipment revenue of \$1,013 and revenue from other sources of \$48. Total revenue for the nine months ended September 30, 2003 included subscriber revenue of \$7,780, net advertising revenue of \$83 and revenue from other sources of \$59.

*Subscriber Revenue.* The increase in subscriber revenue of \$32,397 was attributable to the growth of subscribers to our service. We added 401,228 net new subscribers during the nine months ended September 30, 2004 and had 662,289 subscribers as of September 30, 2004. In comparison, we added 119,665 net new subscribers during the nine months ended September 30, 2003 and had 149,612 subscribers as of September 30, 2003. Subscriber revenue for the nine months ended September 30, 2004 included subscription fees of \$40,475 and activation fees of \$1,302, and was offset by \$1,600 of costs associated with mail-in rebates. Subscriber revenue for the nine months ended September 30, 2003 included subscription fees of \$7,929 and activation fees of \$281, and was offset by \$430 of costs associated with mail-in rebates.

Average monthly revenue per subscriber, or ARPU. Set forth below is a chart showing the calculation of ARPU and the average monthly revenue per Hertz subscriber:

	For the Nine Months Ended September 30,	
	2004	2003
Average monthly revenue per subscriber	\$ 11.15	\$ 12.08
Effects of Hertz subscribers	(0.29)	(1.52)
ARPU before effects of mail-in rebates	10.86	10.56
Effects of mail-in rebates	(0.42)	(0.55)
Reported ARPU	\$ 10.44	\$ 10.01
Average monthly revenue per Hertz subscriber	\$ 6.29	\$ 3.39

Lower average monthly revenue per subscriber was a result of promotional activity, which ended in July 2004, providing an effective first year price of \$9.99 per month for new subscribers, our \$6.99 multi-receiver plan, and the popularity of our annual and longer subscription plans. Higher reported ARPU was a direct result of the expiration of our mail-in rebate program in July 2004 and an overall improvement in our Hertz program.

*Satellite and Transmission.* Satellite and transmission expenses increased \$674 to \$24,215 for the nine months ended September 30, 2004 from \$23,541 for the nine months ended September 30, 2003. The increase in satellite and transmission expenses was primarily attributable to additions to our terrestrial repeater network and maintenance of existing sites, and the use of security software to prevent the theft of our service. These increases were offset by a reduction in satellite insurance costs of \$1,395 as a result of the discontinuation of our satellite insurance on August 2, 2004.

*Programming and Content.* Programming and content expenses increased \$16,261 to \$37,972 for the nine months ended September 30, 2004 from \$21,711 for the nine months ended September 30, 2003. The increase in programming and content expenses was primarily attributable to an increase of \$14,255 for costs to create, produce and acquire content, including personnel related costs, consultant costs, license fees and advertising revenue share. Specifically, of the \$14,255 increase, \$6,496 was related to our agreement with the NFL. The remaining increase in content related costs was primarily a result of other programming agreements associated with the expansion of our programming line-up. In addition to the increase in content related costs, we also incurred additional on-air talent costs of \$902 primarily due to the expansion of our programming line-up and an increase of \$1,104 in broadcast royalties as a result of an increase in our subscribers.

*Customer Service and Billing.* Customer service and billing expenses decreased \$7,040 to \$13,718 for the nine months ended September 30, 2004 from \$20,758 for the nine months ended September 30, 2003. The decrease in expense was primarily due to a \$14,465 loss on the disposal of our prior subscriber management system in May 2003 as a result of the termination of our agreement with the provider. Such decrease in customer service and billing expenses was primarily offset by an additional \$4,234 in customer service representative and telecommunication costs to support the growth of our subscriber base; \$1,506 in credit card fees, also as a result of the growth of our subscriber base; and \$528 in subscriber management system operation and maintenance costs. Additionally, we incurred higher personnel related costs to support our continued growth and the operation of our subscriber management system. Customer service and billing expenses, excluding the loss on disposal of our prior subscriber management system, increased 118% compared with an increase in our end of period subscribers of 343% as of September 30, 2004 as compared with September 30, 2003.

*Sales and Marketing.* Sales and marketing expenses increased \$17,486 to \$103,248 for the nine months ended September 30, 2004 from \$85,762 for the nine months ended September 30, 2003. Advertising media and production costs increased \$2,487 for the nine months ended September 30, 2004 as compared with the nine months ended September 30, 2003 primarily as a result of costs to launch our SIRIUS NFL Sunday Drive programming. Such costs were offset by a decline in media spending incurred in connection with the introduction of our plug-n-play product for the nine months ended September 30, 2003 and a decline in sponsorship costs. Distribution costs increased approximately \$8,271 for the nine months ended September 30, 2004 as compared with the nine months ended September 30, 2003 primarily as a result of costs associated with the rollout of our sales efforts with RadioShack and variable expenses for residuals and revenue share as a result of increases in sales and

activations. The remaining increase was attributable to increased compensation and related costs for additions to our sales and marketing headcount, and consulting fees.

*Subscriber Acquisition Costs.* Subscriber acquisition costs increased \$61,733 to \$108,758 for the nine months ended September 30, 2004 from \$47,025 for the nine months ended September 30, 2003. The increase in subscriber acquisition costs was primarily attributable to subsidies for higher shipments of SIRIUS radios and chip sets to accommodate the growth of our subscriber base and increases in commissions as a result of a 258% increase in gross activations. Our gross activations were 465,077 in the nine months ended September 30, 2004 as compared with gross activations of 129,900 in the nine months ended September 30, 2003.

Subscriber acquisition costs per gross activation was \$235 and \$362 for the nine months ended September 30, 2004 and 2003, respectively. The decline in subscriber acquisition costs per gross activation was primarily attributable to the 258% increase in gross activations as compared with the 131% increase in total subscriber acquisition costs in addition to the reduction in subsidy rates as a result of the introduction of new generation product.

*General and Administrative.* General and administrative expenses increased \$2,295 to \$31,009 for the nine months ended September 30, 2004 from \$28,714 for the nine months ended September 30, 2003. The increase was primarily a result of higher consulting fees. Compensation expense also increased due to headcount additions, we incurred higher rent and occupancy costs for office space, bad debt expense increased due to the growth of our subscriber base, and we incurred higher costs in connection with our annual meeting of stockholders. These increases were partially offset by a \$6,846 decrease in legal fees and settlement costs associated with the termination of our agreement with the prior provider of our subscriber management system in the nine months ended September 30, 2003.

*Research and Development.* Research and development expenses increased \$3,222 to \$22,090 for the nine months ended September 30, 2004 from \$18,868 for the nine months ended September 30, 2003. The increase in research and development expenses was primarily attributable to an increase in the incorporation of SIRIUS radios into vehicles manufactured by automakers, our joint development agreement with XM Satellite Radio, and compensation and consulting costs related to the continued development of future generation chip sets and products. Specifically, in the third quarter of 2004, our research and development expenses increased as a result of non-recurring engineering costs associated with tooling and manufacturing upgrades at DaimlerChrysler and Ford's plan to factory install SIRIUS radios in up to twenty 2006 and 2007 model vehicles. Such increase in expense was offset by a decrease in costs primarily related to the development of our chip sets.

*Equity Granted to Third Parties and Employees.* Expense associated with equity granted to third parties increased \$29,821 to \$29,832 for the nine months ended September 30, 2004 from \$11 for the nine months ended September 30, 2003. The expense for the nine months ended September 30, 2004 included \$13,420 primarily for vesting events associated with various distribution and programming arrangements, \$1,933 of costs associated with the 15,173,070 shares of our common stock granted to the NFL upon signing the agreement, and \$1,368 related to warrants for media assets provided to us under the NFL agreement. The remaining expense for the nine months ended September 30, 2004 was accrued based on certain partners' performance toward achieving milestones and included the effect of price changes in our common stock.

Equity granted to employees increased \$15,112 to \$17,828 for the nine months ended September 30, 2004 from \$2,716 for the nine months ended September 30, 2003. The increase is primarily a result of expense recognized in connection with the issuance of stock-based awards to employees and consultants in the third quarter of 2003, which included a combination of stock options with exercise prices below fair market value at the date of grant and restricted stock units. Such expense was recorded over the applicable vesting period. Also, included in the expense for the nine months ended September 30, 2004 was \$2,647 associated with the accelerated vesting of options during the first quarter of 2004 upon the satisfaction of performance criteria in 2003.

*Debt Restructuring.* We recorded a gain of \$256,538 in connection with the restructuring of our long-term debt for the nine months ended September 30, 2003. This gain represents the difference between the carrying value of our 15% Senior Secured Discount Notes due 2007, 14½% Senior Secured Notes due 2009, Lehman term loans and Loral term loans, including accrued interest, and the fair market value of the common stock issued, adjusted for unamortized debt issuance costs and direct costs associated with the restructuring. This gain is net of a loss on our 8¾% Convertible Subordinated Notes due 2009 exchanged in the restructuring. The loss represents the difference between the fair market value of the common stock issued in the exchange and the fair market value of the common

stock which would have been issued under the original conversion ratio, including accrued interest, adjusted for unamortized debt issuance costs and direct costs associated with the restructuring.

*Interest Expense.* Interest expense increased \$7,662 to \$34,235 for the nine months ended September 30, 2004 from \$26,573 for the nine months ended September 30, 2003. The increase in interest expense was attributable to debt conversion costs incurred as a result of the exchange of debt for our common stock in the first quarter of 2004. Debt conversion costs represent the loss on conversion associated with the debt exchanged. Such costs were \$19,592 for the nine months ended September 30, 2004. The overall increase in interest expense was offset by a decrease in interest as a result of our debt restructuring.

*Other Income.* Other income for the nine months ended September 30, 2004 was primarily related to a legal settlement in our favor of \$1,333.

*Income Tax Expense.* We recorded income tax expense of \$3,641 for the nine months ended September 30, 2004. This expense represents the recognition of a deferred tax liability related to the difference in accounting for our FCC license, which is amortized over 15 years for tax purposes but not amortized for book purposes.

## **Liquidity and Capital Resources**

### ***Cash Flows for the Nine Months Ended September 30, 2004 Compared with Nine Months Ended September 30, 2003***

Net cash used in operating activities increased \$24,783 to \$235,520 for the nine months ended September 30, 2004 as compared with \$210,737 for the nine months ended September 30, 2003. The \$66,539 increase in the net loss adjusted for non-cash items, from \$243,821 for the nine months ended September 30, 2003 to \$310,360 for the nine months ended September 30, 2004, was offset by \$41,756 for changes in assets and liabilities. The increase in the net loss adjusted for non-cash items was a result of increases in operating expenses of \$96,246 primarily to acquire additional content for our music and non-music channels; to market our service to potential subscribers; and to pay incentives and subsidies to acquire new subscribers as we prepare for the holiday selling season. Specifically, increases in programming and content expense and sales and marketing expense were due in part to market the launch of our SIRIUS NFL Sunday Drive programming. These expenses were offset by the \$33,715 increase in revenue driven by the addition of 465,077 gross subscribers in the nine months ended September 30, 2004. The net inflow of cash from changes in assets and liabilities was primarily attributable to an increase of \$35,589 in accounts payable and accrued expenses to support our operations and an increase of \$27,957 in deferred revenue for subscribers electing annual and other prepaid subscription programs. We currently receive an average of nine to ten months of prepaid revenue per subscriber upon activation. Such increases were offset in part by the \$13,073 reduction in accrued interest and the increase in prepaid expenses and other current assets of \$7,541 primarily for chip sets held on consignment and expected to be used in the fourth quarter of 2004.

We expect to continue to have net outflows of cash for the remainder of 2004 to fund the continued growth of our operations. These cash outflows will be partially offset by cash received from subscribers on annual and other prepaid subscription programs.

Net cash used in investing activities was \$87,183 for the nine months ended September 30, 2004 compared with net cash provided by investing activities of \$110,795 for the nine months ended September 30, 2003. For the nine months ended September 30, 2004, we deposited \$85,000 in escrow in connection with our NFL agreement to fund the rights fees for the 2006-2009 NFL seasons and \$5,104 in escrow in connection with Ford's factory installation program. These deposits were offset by cash inflows of \$25,000 as a result of the maturity of available-for-sale securities, which were purchased in the nine months ended September 30, 2003. For the nine months ended September 30, 2003 there was a net inflow of cash as a result of \$150,000 received in connection with the maturity of certain available-for-sale securities. Capital expenditures increased to \$22,316 from \$14,379 for the nine months ended September 30, 2004 and 2003, respectively, primarily as a result of the implementation of our new subscriber management system.

Net cash provided by financing activities was \$319,355 and \$532,075 for the nine months ended September 30, 2004 and 2003, respectively. During the nine months ended September 30, 2004, we issued \$300,000 in principal amount of our 2½% Convertible Notes due 2009, resulting in net proceeds of \$293,600. We also received proceeds from the exercise of options and warrants of \$6,004 and \$19,850, respectively, for the nine months ended

September 30, 2004. During the nine months ended September 30, 2003, we sold 211,730,379 and 86,250,000 shares of common stock resulting in net proceeds of \$197,112 and \$145,547, respectively, and incurred costs associated with our debt restructuring of \$4,737. During the nine months ended September 30, 2003, we also issued \$201,250 in aggregate principal amount of our 3½% Convertible Notes due 2008 resulting in net proceeds of \$194,224.

#### ***Financings and Capital Requirements***

We have financed our operations through the sale of debt and equity securities. As of September 30, 2004, we had cash, cash equivalents and marketable securities totaling \$523,207 and working capital of \$405,340, compared with cash, cash equivalents and marketable securities totaling \$549,883 and working capital of \$497,661 as of December 31, 2003.

In January 2004, we signed a seven-year programming and marketing agreement with the NFL. In connection with this agreement, we paid \$5,000 in December 2003, \$5,000 in February 2004 and \$85,000 was deposited in escrow in January 2004. The \$85,000 deposited in escrow will be drawn by the NFL to pay the rights fees due for the 2006-2009 NFL seasons. We are not required to make further payments to the NFL until August 2009.

In the first quarter of 2004, we issued \$300,000 in aggregate principal amount of our 2½% Convertible Notes due 2009, resulting in net proceeds of \$293,600. We also issued 21,027,512 shares of our common stock for \$19,850 in net proceeds in connection with Blackstone's exercise of certain warrants.

In October 2004, we raised additional capital through the offering of 25,000,000 shares of common stock and the issuance of \$230,000 in aggregate principal amount of our 3¼% Convertible Notes due 2011 resulting in net proceeds of approximately \$321,000.

Effective as of August 2, 2004, we discontinued our in-orbit satellite insurance. In the event of a catastrophic failure of one of our satellites, we have sufficient cash, cash equivalents and marketable securities to launch and insure our spare satellite.

Based upon our current plans, we believe that our cash, cash equivalents and marketable securities will be sufficient to cover our estimated funding needs through cash flow breakeven, the point at which our revenues are sufficient to fund expected operating expenses, capital expenditures, working capital requirements, interest and principal payments and taxes. Our financial projections are based on assumptions which we believe are reasonable but contain significant uncertainties.

We may change our plans and, as a result, our actual funding requirements could vary materially. We may need to raise additional funds through the sale of additional debt and equity securities to fund costs that are not contemplated by our business plan. Such costs may include the costs of acquiring new programming as well as distribution costs and subscriber acquisition costs, investing in our infrastructure and/or potential acquisitions. The sale or issuance of additional equity or convertible debt securities would result in dilution to our stockholders. The incurrence of indebtedness would result in increased fiscal obligations and could result in operating covenants that would restrict our operations. If changes to our business plan resulted in a need for additional capital, we cannot provide assurance that these additional sources of funds will be available, or, if available, would have reasonable terms.

### 2003 Long-Term Stock Incentive Plan

In January 2003, our board of directors adopted the Sirius Satellite Radio 2003 Long-Term Stock Incentive Plan (the "2003 Plan"), and on March 4, 2003 our stockholders approved this plan. On May 25, 2004, our stockholders approved an amendment to the 2003 Plan to include members of our board of directors as eligible participants. The purpose of the 2003 Plan is to promote our long-term financial success by enhancing our ability to attract, retain and reward individuals who contribute to our success and to further align our personnel with stockholders. Employees, consultants and members of our board of directors are eligible to receive awards under the 2003 Plan. As of September 30, 2004, approximately 126,327,000 shares of our common stock were available for grant under the 2003 Plan.

The 2003 Plan provides for the grant of stock options, restricted stock, restricted stock units and other stock-based awards that the compensation committee of our board of directors may deem appropriate. Vesting and other terms of stock-based awards are set forth in the agreements with the individuals receiving the awards. Stock-based awards granted under the 2003 Plan generally vest over three to five years from the date of grant and expire in ten years.

In 2003, we granted 47,707,250 non-qualified stock options to employees and consultants with an exercise price of \$1.04 per share. Approximately 42% of these options vest ratably over three years and 33% vest in July 2008 with acceleration to March 2005 if performance criteria are satisfied in 2004. Of these options, 25% vested in March 2004 upon the satisfaction of performance criteria. Employees exercised 5,715,333 of these options during the nine months ended September 30, 2004 resulting in proceeds to us of \$5,944. The exercise of the remaining vested options could result in an inflow of cash in future periods.

### Contractual Cash Commitments

We have entered into various contracts that have resulted in significant cash obligations in future periods. These cash obligations could vary in future periods if we change our business plan or strategy, which could include significant additions to our programming, infrastructure or distribution. The following table summarizes our expected contractual cash commitments as of September 30, 2004:

	Remaining 2004	2005	2006	2007	2008	Thereafter	Total
Long-term debt obligations	\$ 5,561	\$ 18,774	\$ 18,774	\$ 47,974	\$ 80,467	\$ 338,098	\$ 509,648
Lease obligations	1,764	7,930	7,379	6,916	5,506	30,861	60,356
Satellite and transmission	789	3,155	3,155	3,155	3,155	18,182	31,591
Programming and content	4,396	25,326	30,420	8,408	4,811	79,975	153,336
Customer service and billing	360	4,625	3,310	3,032	—	—	11,327
Marketing and distribution	28,735	54,355	20,186	8,717	4,177	13,950	130,120
Chip set development and production	940	11,548	10,048	—	—	—	22,536
Total contractual cash commitments	\$ 42,545	\$ 125,713	\$ 93,272	\$ 78,202	\$ 98,116	\$ 481,066	\$ 918,914

### Long-Term Debt Obligations

Long-term debt obligations include principal and interest payments. As of September 30, 2004, we had \$428,452 in aggregate principal amount of outstanding debt, consisting of \$29,200 in aggregate principal amount at maturity of our 15% Senior Secured Discount Notes due 2007, \$30,258 in aggregate principal amount of our 14½% Senior Secured Notes due 2009, \$67,250 in aggregate principal amount of our 3½% Convertible Notes due 2008, \$1,744 in aggregate principal amount of our 8¾% Convertible Subordinated Notes due 2009 and \$300,000 in aggregate principal amount of our 2½% Convertible Notes due 2009.

### Operating Leases

We have entered into operating leases related to our national broadcast studio, office space, terrestrial repeater sites and equipment.

### ***Satellite and Transmission***

We have entered into an agreement with a provider of satellite services to operate our off-site satellite telemetry, tracking and control facilities.

### ***Programming and Content***

We have entered into agreements with licensors of music and non-music programming and, in certain instances, are obligated to pay license fees, and guarantee minimum advertising revenue share. In addition, we have agreements with various rights organizations pursuant to which we pay royalties for public performances of music.

### ***Customer Service and Billing***

We have entered into agreements with third parties to provide customer service, billing and subscriber management services.

### ***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. In addition, certain programming and content agreements require us to purchase advertising on properties owned or controlled by the licensors. We have also agreed to reimburse automakers for certain engineering and development costs associated with the incorporation of SIRIUS radios into vehicles they manufacture.

### ***Chip Set Development and Production***

We have entered into agreements with Agere Systems, Inc. ("Agere") and STMicroelectronics ("ST") to produce chip sets for use in SIRIUS radios. Our agreement with ST requires that we purchase a minimum quantity of chip sets during a three-year period and pay for the development of the chip sets as milestones are satisfied. Our agreements with Agere also require us to pay for the development of our chip sets and to license us intellectual property related to our chip sets.

### ***Joint Development Agreement***

Under the terms of a joint development agreement with XM Satellite Radio, the other holder of a FCC satellite radio license, each party is obligated to fund one half of the development cost for a unified standard for satellite radios. The costs related to the joint development agreement are being expensed as incurred to research and development expense. We are currently unable to determine the expenditures necessary to complete this process, but they may be significant.

### ***Other Commitments***

In addition to the contractual cash commitments described above, we have also entered into agreements with automakers, radio manufacturers and others that include per-radio and per-subscriber required payments and revenue share arrangements. These future costs are dependent upon many factors and are difficult to anticipate; however, these costs may be substantial. We may enter into additional programming, marketing and other agreements that contain provisions similar to our current agreements.

We are required under the terms of certain agreements to provide letters of credit, which place restrictions on our cash and cash equivalents. As of September 30, 2004 and December 31, 2003, \$7,115 and \$8,747, respectively, were classified as restricted investments to secure our reimbursement obligations under these letters of credit.

As of September 30, 2004, we have not entered into any off-balance sheet arrangements or transactions.

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

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles, which require management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the periods. We have disclosed all significant accounting policies in Note 3 to the consolidated financial statements included in this report. 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.

*Subscription Revenue Recognition.* Revenue from subscribers consists of subscription fees, including revenue derived from our agreement with Hertz, and non-refundable activation fees. We recognize subscription fees as our service is provided. Activation fees are recognized ratably over the term of the subscriber relationship, currently estimated to be 3.5 years. The estimated term of a subscriber relationship is based on market research and management's judgment and, if necessary, will be refined in the future as additional historical data becomes available. As required by Emerging Issues Task Force No. 01-09, "Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)," an estimate of mail-in rebates that will be paid by us directly to subscribers is recorded as a reduction to subscriber revenue in the period the subscriber activates our service.

*Stock-Based Compensation.* In accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," we use the intrinsic value method to measure the compensation costs of stock-based awards granted to employees and members of our board of directors. Accordingly, we record compensation expense for stock-based awards granted to employees and members of our board of directors over the vesting period equal to the excess of the market price of the underlying common stock at the date of grant over the exercise price of the stock-based award. The intrinsic value of restricted stock units as of the date of grant is amortized to expense over the vesting period. These charges are recorded as a component of equity granted to third parties and employees. To the extent any performance criteria are satisfied and the vesting of any stock options and/or restricted stock units accelerate, the unamortized stock compensation expense associated with these options or restricted stock units is also accelerated.

We account for stock-based awards granted to non-employees at fair value in accordance with Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation." In accordance with Emerging Issues Task Force 96-18, "Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services," we record expense based upon performance and the fair value of equity instruments issued to non-employees, other than non-employee members of our board of directors, at each reporting date. The final measurement date of equity instruments is the date that each performance commitment for such equity instrument is satisfied. These costs are classified in our accompanying statements of operations as a component of equity granted to third parties and employees.

In accordance with Financial Accounting Standards Board Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation," we record compensation charges or benefits related to repriced stock options based on the market value of our common stock until the repriced stock options are exercised, forfeited or expire.

*Subscriber Acquisition Costs.* Subscriber acquisition costs include subsidies paid to radio manufacturers, automakers, retailers and chip set manufacturers and commissions paid to radio manufacturers and automakers as incentives to purchase, install and activate SIRIUS radios. The majority of subscriber acquisition costs are incurred in advance of acquiring a subscriber. Subscriber acquisition costs do not include advertising, loyalty payments to distributors and dealers of SIRIUS radios and revenue share payments to automakers and radio manufacturers of SIRIUS radios. Subscriber acquisition costs also do not include amounts capitalized in connection with our agreement with Hertz, as we retain ownership of the SIRIUS radios used by Hertz. Subscriber acquisition costs are expensed as incurred.

Costs for chip set production are expensed as subscriber acquisition costs when the chip sets are shipped to radio manufacturers. 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.

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

*Useful Life of Satellite System.* Our satellite system includes the cost of satellite construction, launch vehicles, launch insurance, capitalized interest, our spare satellite and our terrestrial repeater network. In accordance with SFAS No. 144, we monitor our satellites for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset is not recoverable. The expected useful lives of our in-orbit satellites are 15 years

from the date they were placed into orbit. We are depreciating our three in-orbit satellites over their respective remaining useful lives beginning February 14, 2002 or, in the case of our spare satellite, from the date it was delivered to ground storage in April 2002. If placed into orbit, our spare satellite is expected to operate effectively for 15 years. Space Systems/Loral, the manufacturer of our satellites, has identified circuit failures in solar arrays on satellites since 1997, including our satellites. We continue to monitor these failures, which we believe have not affected the expected useful lives of our satellites. If events or circumstances indicate that the useful lives of our satellites have changed, we will modify the depreciable life accordingly.

*FCC License.* We carry our FCC license at cost. Our FCC license has an indefinite life and will be evaluated for impairment on an annual basis or more frequently if there are indicators of impairment. In accordance with SFAS No. 142, "Goodwill and Other Intangible Assets," we completed an impairment analysis of our FCC license on November 1, 2003, and determined that there was no impairment. We use projections regarding estimated future cash flows and other factors in assessing the fair value of our FCC license. If these estimates or projections change in the future, we may be required to record an impairment charge related to our FCC license.

#### **Item 4. Controls and Procedures**

As of September 30, 2004, an evaluation was performed under the supervision and with the participation of our management, including Joseph P. Clayton, 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 and control 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 September 30, 2004. There have been no significant changes in our internal controls or in other factors that could significantly affect these internal controls subsequent to September 30, 2004.

## Part II

### Other Information

#### Item 5. Other Information

On November 8, 2004, we entered into an agreement with Patrick L. Donnelly to continue as our Executive Vice President, General Counsel and Secretary through April 30, 2007. A copy of this agreement is attached as Exhibit 10.6 to this report.

#### Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits.

See Exhibit Index attached hereto.

(b) Reports on Form 8-K.

On July 21, 2004, we filed a Current Report on Form 8-K to announce our financial and operating results for the quarter ended June 30, 2004.

**SIGNATURES**

Pursuant to the requirements of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SIRIUS SATELLITE RADIO INC.

By: /s/ DAVID J. FREAR

\_\_\_\_\_  
David J. Frear  
Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)

November 9, 2004

## EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>
3.1	— Amended and Restated Certificate of Incorporation 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	— Amended and Restated By-Laws (incorporated by reference to Exhibit 3.2 to the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2001).
3.3	— Form of Certificate of Designations of Series B Preferred Stock (incorporated by reference to Exhibit A to Exhibit 1 to the Company’s Registration Statement on Form 8-A filed on October 30, 1997 (the “Form 8-A”).
4.1	— Form of certificate for shares of Common Stock (incorporated by reference to Exhibit 4.3 to the Company’s Registration Statement on Form S-1 (File No. 33-74782) (the “S-1 Registration Statement”).
4.2.1	— Rights Agreement, dated as of October 22, 1997 (the “Rights Agreement”), between the Company and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to Exhibit 1 to the Form 8-A).
4.2.2	— Form of Right Certificate (incorporated by reference to Exhibit B to Exhibit 1 to the Form 8-A).
4.2.3	— Amendment to the Rights Agreement dated as of October 13, 1998 (incorporated by reference to Exhibit 99.2 to the Company’s Current Report on Form 8-K dated October 13, 1998).
4.2.4	— Amendment to the Rights Agreement dated as of November 13, 1998 (incorporated by reference to Exhibit 99.7 to the Company’s Current Report on Form 8-K dated November 17, 1998).
4.2.5	— Amended and Restated Amendment to the Rights Agreement dated as of December 22, 1998 (incorporated by reference to Exhibit 6 to Amendment No. 1 to the Form 8-A filed on January 6, 1999).
4.2.6	— Amendment to the Rights Agreement dated as of June 11, 1999 (incorporated by reference to Exhibit 4.1.8 to the Company’s Registration Statement on Form S-4 (File No. 333-82303) (the “1999 Units Registration Statement”).
4.2.7	— Amendment to the Rights Agreement dated as of September 29, 1999 (incorporated by reference to Exhibit 4.1 to the Company’s Current Report on Form 8-K filed on October 13, 1999).
4.2.8	— Amendment to the Rights Agreement dated as of December 23, 1999 (incorporated by reference to Exhibit 99.4 to the Company’s Current Report on Form 8-K filed on December 29, 1999).
4.2.9	— Amendment to the Rights Agreement dated as of January 28, 2000 (incorporated by reference to Exhibit 4.6.9 to the Company’s Annual Report on Form 10-K for the year ended December 31, 1999 (the “1999 Form 10-K”).
4.2.10	— Amendment to the Rights Agreement dated as of August 7, 2000 (incorporated by reference to Exhibit 4.6.10 to the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2000).
4.2.11	— Amendment to the Rights Agreement dated as of January 8, 2002 (incorporated by reference to Exhibit 4.6.11 to the Company’s Annual Report on Form 10-K for the year ended December 31, 2001 (the “2001 Form 10-K”).
4.2.12	— Amendment to the Rights Agreement dated as of October 22, 2002 (incorporated by reference to Exhibit 99.1 to the Company’s Current Report on Form 8-K filed on October 24, 2002).
4.2.13	— Amendment to the Rights Agreement dated as of March 6, 2003 (incorporated by reference to Exhibit 4.2.13 to the Company’s Annual Report on Form 10-K for the year ended December 31, 2002).
4.2.14	— Amendment to the Rights Agreement dated as of March 31, 2003 (incorporated by reference to Exhibit 99.1 to the Company’s Current Report on Form 8-K dated March 31, 2003).
4.2.15	— Amendment to the Rights Agreement dated as of July 30, 2003 (incorporated by reference to Exhibit 99.1 to the Company’s Current Report on Form 8-K dated July 30, 2003).
4.2.16	— Amendment to the Rights Agreement dated as of January 14, 2004 (incorporated by reference to Exhibit 99.1 to the Company’s Current Report on Form 8-K dated January 15, 2004).

<u>Exhibit</u>	<u>Description</u>
4.2.17	— Amendment to the Rights Agreement dated as of June 30, 2004 (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K dated June 30, 2004).
4.3	— Indenture, dated as of November 26, 1997, between the Company and IBJ Schroder Bank & Trust Company, as trustee, relating to the Company's 15% Senior Secured Discount Notes due 2007 (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 (File No. 333-34769) (the "1997 Units Registration Statement").
4.4	— Supplemental Indenture, dated as of March 7, 2003, between the Company and The Bank of New York (as successor to IBJ Schroder Bank & Trust Company), as trustee, relating to the Company's 15% Senior Secured Discount Notes due 2007 (incorporated by reference to Exhibit 4.4 to the Company's Annual Report on Form 10-K for the year ended December 31, 2002).
4.5	— Form of 15% Senior Secured Discount Note due 2007 (incorporated by reference to Exhibit 4.2 to the 1997 Units Registration Statement).
4.6	— Form of Common Stock Purchase Warrant granted by the Company to Everest Capital Master Fund, L.P. and to The Ravich Revocable Trust of 1989 (incorporated by reference to Exhibit 4.11 to the Company's Annual Report on Form 10-K for the year ended December 31, 1997).
4.7	— Indenture, dated as of May 15, 1999, between the Company and United States Trust Company of New York, as trustee, relating to the Company's 14½% Senior Secured Notes due 2009 (incorporated by reference to Exhibit 4.4.2 to the 1999 Units Registration Statement).
4.8	— Supplemental Indenture, dated as of March 7, 2003, between the Company and The Bank of New York (as successor to United States Trust Company of New York), as trustee, relating to the Company's 14½% Senior Secured Notes due 2009 (incorporated by reference to Exhibit 4.10 to the Company's Annual Report on Form 10-K for the year ended December 31, 2002).
4.9	— Form of 14½% Senior Secured Note due 2009 (incorporated by reference to Exhibit 4.4.3 to the 1999 Units Registration Statement).
4.10	— Warrant Agreement, dated as of May 15, 1999, between the Company and United States Trust Company of New York, as warrant agent (incorporated by reference to Exhibit 4.4.4 to the 1999 Units Registration Statement).
4.11	— Indenture, dated as of September 29, 1999, between the Company and United States Trust Company of Texas, N.A., as trustee, relating to the Company's 8¾% Convertible Subordinated Notes due 2009 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on October 13, 1999).
4.12	— First Supplemental Indenture, dated as of September 29, 1999, between the Company and United States Trust Company of Texas, N.A., as trustee, relating to the Company's 8¾% Convertible Subordinated Notes due 2009 (incorporated by reference to Exhibit 4.01 to the Company's Current Report on Form 8-K filed on October 1, 1999).
4.13	— Second Supplemental Indenture, dated as of March 4, 2003, among the Company, The Bank of New York (as successor to United States Trust Company of Texas, N.A.), as resigning trustee, and HSBC Bank USA, as successor trustee, relating to the Company's 8¾% Convertible Subordinated Notes due 2009 (incorporated by reference to Exhibit 4.16 to the Company's Annual Report on Form 10-K for the year ended December 31, 2002).
4.14	— Third Supplemental Indenture, dated as of March 7, 2003, between the Company and HSBC Bank USA, as trustee, relating to the Company's 8¾% Convertible Subordinated Notes due 2009 (incorporated by reference to Exhibit 4.17 to the Company's Annual Report on Form 10-K for the year ended December 31, 2002).

<u>Exhibit</u>	<u>Description</u>
4.15	— Form of 8¾% Convertible Subordinated Note due 2009 (incorporated by reference to Article VII of Exhibit 4.01 to the Company's Current Report on Form 8-K filed on October 1, 1999).
4.16	— 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).
4.17	— Supplemental Indenture, dated as of May 23, 2003, between the Company and The Bank of New York, as trustee, relating to the Company's 3½% Convertible Notes due 2008 (incorporated by reference to Exhibit 99.3 to the Company's Current Report on Form 8-K dated May 30, 2003).
4.18	— Second Supplemental Indenture, dated as of February 20, 2004, between the Company and The Bank of New York, as trustee, relating to the Company's 2½% Convertible Notes due 2009 (incorporated by reference to Exhibit 4.20 to the Company's Annual Report on Form 10-K for the year ended December 31, 2003).
4.19	— 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 3¼% 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).
4.20	— Common Stock Purchase Warrant granted by the Company to DaimlerChrysler AG dated June 3, 2004 (incorporated by reference to Exhibit 4.21 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004).
4.21	— 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).
4.22	— Form of Series A Common Stock Purchase Warrant dated March 7, 2003 (incorporated by reference to Exhibit 4.20 to the Company's Annual Report on Form 10-K for the year ended December 31, 2002).
4.23	— Form of Series B Common Stock Purchase Warrant dated March 7, 2003 (incorporated by reference to Exhibit 4.21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2002).
4.24	— Form of Media-Based Incentive Warrant dated February 3, 2004 issued by the Company to NFL Enterprises LLC (incorporated by reference to Exhibit 4.25 to the Company's Annual Report on Form 10-K for the year ended December 31, 2003).
4.25	— Bounty-Based Incentive Warrant dated February 3, 2004 issued by the Company to NFL Enterprises LLC (incorporated by reference to Exhibit 4.26 to the Company's Annual Report on Form 10-K for the year ended December 31, 2003).
4.26	— 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)).
4.27	— Second Amended and Restated Pledge Agreement, dated as of March 7, 2001, among the Company, as pledgor, The Bank of New York, as trustee and collateral agent, United States Trust Company of New York, as trustee, and Lehman Commercial Paper Inc., as administrative agent (incorporated by reference to Exhibit 4.25 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001).
4.28	— Collateral Agreement, dated as of March 7, 2001, between the Company, as borrower, and The Bank of New York, as collateral agent (incorporated by reference to Exhibit 4.26 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001).
4.29	— Amended and Restated Intercreditor Agreement, dated as of March 7, 2001, by and between The Bank of New York, as trustee and collateral agent, United States Trust Company of New York, as trustee, and Lehman Commercial Paper Inc., as administrative agent (incorporated by reference to Exhibit 4.27 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001).

<u>Exhibit</u>	<u>Description</u>
10.1.1	— 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).
10.1.2	— 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).
*10.2	— Employment Agreement, dated as of November 26, 2001, between the Company and Joseph P. Clayton (incorporated by reference to Exhibit 10.6 to the 2001 Form 10-K).
*10.3	— 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).
*10.4	— Employment Agreement, dated as of May 5, 2004, between the Company and Scott A. Greenstein (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004).
*10.5	— Employment Agreement, dated as of May 5, 2004, between the Company and James E. Meyer (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004).
*10.6	— Employment Agreement, dated as of November 8, 2004, between the Company and Patrick L. Donnelly (filed herewith).
*10.7	— Agreement, dated as of October 16, 2001, between the Company and David Margolese (incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001).
*10.8	— 1994 Stock Option Plan (incorporated by reference to Exhibit 10.21 to the S-1 Registration Statement).
*10.9	— Amended and Restated 1994 Directors' Nonqualified Stock Option Plan (incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K for the year ended December 31, 1995).
*10.10	— 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)).
*10.11	— 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).
*10.12	— Form of Option Agreement, dated as of December 29, 1997, 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).
†10.13	— Joint Development Agreement, dated as of February 16, 2000, between the Company and XM Satellite Radio Inc. (incorporated by reference to Exhibit 10.28 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2000).
31.1	— Certificate of Joseph P. Clayton, 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 Joseph P. Clayton, 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).

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

† Portions of this exhibit have been omitted pursuant to Applications for Confidential treatment filed by the Company with the Securities and Exchange Commission.

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT, dated as of November 8, 2004 (this "Agreement"), between SIRIUS SATELLITE RADIO INC., a Delaware corporation (the "Company"), and Patrick L. Donnelly (the "Executive").

In consideration of the mutual covenants and conditions set forth herein, the Company and the Executive agree as follows:

1. Employment. Subject to the terms and conditions of this Agreement, the Company hereby employs the Executive, and the Executive hereby accepts employment with the Company.

2. Duties and Reporting Relationship. (a) The Executive shall be employed in the capacity of Executive Vice President, General Counsel and Secretary of the Company. During the Term (as defined below), the Executive shall, on a full-time basis, use his skills and render services to the best of his ability in supervising the legal affairs of the Company, including all legal aspects of the Company's obligations as a reporting company under the Securities Exchange Act of 1934, as amended; the preparation, filing, printing and distribution of the Company's annual, quarterly and current reports, proxy and information statements, prospectuses and offering memoranda and other required materials with the Securities and Exchange Commission; and the selection, hiring and supervision of any outside counsel for the Company. In addition, the Executive shall perform such other activities and duties, consistent with his position, as the Chief Executive Officer of the Company shall, from time to time, reasonably specify and direct. It is acknowledged that the Executive has made, and may continue to make, passive investments which will require a portion of his time and attention but Executive agrees that such investments will not interfere with his full-time commitment to the Company. The Executive shall not be required by this Agreement to perform duties for any entity other than the Company and its subsidiaries.

(b) The Executive shall generally perform his duties and conduct his business at the principal offices of the Company in New York, New York.

(c) The Executive shall report to the Chief Executive Officer of the Company.

3. Term. The term of this Agreement shall commence on November 9, 2004, and end on April 30, 2007, unless terminated earlier pursuant to the provisions of Section 6 (the "Term").

4. Annual Base Salary. (a) During the Term, the Executive shall be paid an annual base salary of \$358,000, subject to any increases that the Chief Executive Officer of the Company shall approve (such amount, the "Base Salary"). All amounts paid to the Executive under this Agreement shall be in U.S. dollars. The Executive's base salary shall be paid at least monthly and, at the option of the Company, may be paid more frequently. In the event the Executive's employment is terminated during the Term, the Executive's base salary shall be prorated through the date of termination.

(b) All compensation paid to the Executive hereunder shall be subject to any payroll and withholding deductions required by any applicable law.

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5. Additional Compensation, Expenses and Benefits. (a) During the Term, the Company shall promptly reimburse the Executive for all reasonable and necessary business expenses incurred and advanced by him in carrying out his duties under this Agreement. The Executive shall present to the Company from time to time an itemized account of such expenses in such form as may be required by the Company from time to time.

(b) During the Term, the Executive shall be entitled to participate fully in all benefit plans, programs, policies and fringe benefits which may be made available to the executive officers of the Company generally, including, without limitation, medical, dental and life insurance, benefits under the Sirius Satellite Radio 401(k) Savings Plan and retirement plans, if any. The Company agrees that the Executive shall be entitled to annual bonuses, if any, on the same basis as other senior officers of the Company at the same level.

6. Termination. The date upon which this Agreement is deemed to be terminated in accordance with any of the provisions of this Section 6 is referred to herein as the "Termination Date."

(a) Termination for Cause. The Company has the right and may elect to terminate this Agreement for Cause at any time. For purposes of this Agreement, "Cause" means the occurrence or existence of any of the following:

(i) a material breach by the Executive of (A) the terms of this Agreement or (B) his duty not to engage in any transaction that represents, directly or indirectly, self-dealing with the Company or any of its affiliates (which, for purposes hereof, shall mean any individual, corporation, partnership, association, limited liability company, trust, estate, or other entity or organization directly or indirectly controlling, controlled by, or under direct or indirect common control with the Company) which has not been approved by a majority of the disinterested directors of the Board of the Directors (the "Board"), if any such material breach described in clause (A) or clause (B) remains uncured after thirty days have elapsed following the date on which the Company gives the Executive written notice of such breach;

(ii) any material act of dishonesty, misappropriation, embezzlement, intentional fraud, or similar intentional misconduct by the Executive involving the Company or any of its affiliates;

(iii) the conviction or the plea of nolo contendere or the equivalent in respect of a felony;

(iv) any damage of a material nature to any property of the Company or any of its affiliates caused by the Executive's willful misconduct or gross negligence;

(v) the repeated nonprescription use of any controlled substance or the repeated use of alcohol or any other non-controlled substance that, in the reasonable good faith opinion of the Board of Directors, renders the Executive unfit to serve as an officer of the Company or its affiliates;

(vi) the Executive's failure to comply with the Board's reasonable written instructions within five days; or

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(vii) conduct by the Executive that in the reasonable good faith written determination of the Board demonstrates unfitness to serve as an officer of the Company or its affiliates, including, without limitation, a finding by the Board or any judicial or regulatory authority that the Executive committed acts of unlawful harassment or violated any other state, federal or local law or ordinance prohibiting discrimination in employment.

Termination of the Executive for Cause pursuant to this Section 6(a) shall be communicated by a Notice of Termination. For purposes of this Agreement, a "Notice of Termination" shall mean delivery to the Executive of a copy of a resolution or resolutions duly adopted by the affirmative vote of the directors (other than the Executive, if the Executive is then serving on the Board) present (in person or by teleconference) and voting at a meeting of the Board called and held for that purpose after reasonable notice to the Executive and reasonable opportunity for the Executive, together with the Executive's counsel, to be heard before the Board prior to such vote, finding that in the good faith opinion of the Board, the Executive was guilty of conduct set forth in any of clauses (i) through (vii) of this Section 6(a) and specifying the particulars thereof in reasonable detail. For purposes of this Section 6(a), this Agreement shall terminate on the date specified by the Board in the Notice of Termination.

(b) (i) This Agreement and the Executive's employment hereunder shall terminate upon the death of the Executive.

(ii) If the Executive is unable to perform the essential duties and functions of his position because of a disability, even with a reasonable accommodation, for one hundred eighty days within any three hundred sixty-five day period, the Board shall have the right and may elect to terminate the services of the Executive by a Notice of Disability Termination. The Executive shall not be terminated following a Disability except pursuant to this Section 6(b) (ii). For purposes of this Agreement, a "Notice of Disability Termination" shall mean a written notice that sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under this Section 6(b) (ii). For purposes of this Agreement, no such purported termination by the Board shall be effective without such Notice of Disability Termination. This Agreement shall terminate on the day such Notice of Disability Termination is received by the Executive.

(c) Should the Executive wish to resign from his position with the Company during the Term, for other than Good Reason (as defined below), the Executive shall give fourteen days prior written notice to the Company. The Agreement will terminate on the effective date of the resignation as defined above, however, the Company may, at its sole discretion, request that the Executive perform no job responsibilities and cease his or her active employment

immediately upon receipt of the Notice.

(d) The Company shall have the absolute right to terminate the Executive's employment without Cause at any time. If the Company elects to terminate the Executive without Cause, the Company shall give seven days written notice to the Executive. This Agreement shall terminate seven days following receipt of such notice by the Executive, however, the Company, at its sole discretion may request that the Executive cease active employment and perform no more job duties immediately upon provision of such notice to the Executive.

(e) The Executive shall have the absolute right to terminate his employment at any time. Should the Executive wish to resign from his position with the Company for Good Reason during the

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Term, the Executive shall give seven days prior written notice to the Company. This Agreement shall terminate on the date specified in such notice, however, at its sole discretion, the Company may request the Executive cease active employment and perform no more job duties for the Company immediately upon receipt of such notice.

For purposes of this Agreement, "Good Reason" shall mean the continuance of any of the following events (without the Executive's express prior written consent) for a period of fourteen days after delivery to the Company by the Executive of a notice of the occurrence of such event:

(i) the assignment to the Executive by the Company of duties not reasonably consistent with the Executive's position as Executive Vice President, General Counsel and Secretary or his, duties, responsibilities, titles or offices at the commencement of the Term or any material reduction in his duties or responsibilities or any removal of the Executive from or any failure to re-elect the Executive to any of such positions or the Executive not being the sole officer of the Company who is responsible for all legal matters of the Company, including selecting, hiring and directing any outside counsel for the Company (except in connection with a disability of the Executive, the termination of the Executive's employment for Cause, disability or as a result of the Executive's death or by the Executive other than for Good Reason); or

(ii) any reduction in the Base Salary from the previous year;  
or

(iii) any failure of the Company to comply with the terms of Section 5(b) as it relates to the Executive's annual bonuses; or

(iv) a relocation of the Company's executive offices to a location outside of New York City or any requirement that the Executive report for work to a location more than 25 miles from the Company's current headquarters for more than 30 days in any calendar year, excluding any requirement that results from the damage or destruction of the Company's current headquarters as a result of natural disasters, terrorism, acts of war or acts of God; or

(v) any material breach by the Company of any provision of this Agreement.

(f) If the employment of the Executive is terminated without Cause or the Executive terminates for Good Reason, then the Executive shall have an absolute and unconditional right to receive, and the Company shall pay to the Executive without setoff, counterclaim or other withholding, except as set forth in Section 4(b), an amount (in addition to any salary, benefits or other sums due the Executive through the Termination Date) equal to the sum of (x) the Executive's annualized base salary then in effect and (y) the last annual bonus actually paid to the Executive. If the employment of the Executive is terminated without Cause or the Executive terminates for Good Reason, then the Executive shall be entitled to a continuation of medical and life insurance benefits, as if he had remained an active employee, until the first anniversary of the Termination Date. The Company's obligations under this Section 6(f) shall be conditioned upon the Executive executing and delivering an agreement, and waiver and release of claims against the Company, in the form attached as Exhibit A. Any amount becoming payable under Section 6(f) shall be paid in immediately available funds on the tenth business day following the execution and delivery by the Executive of the agreement, and waiver and release of claims against the Company, attached as Exhibit A; provided that the Executive has not revoked such agreement in accordance with the terms thereof prior to such date.

7. Gross-Up Provisions. (a) If the Executive is, in the opinion of a nationally recognized accounting firm selected by the Executive in his sole discretion, expected to pay an excise tax on "excess parachute payments" (as defined in Section 280G(b) of the Internal Revenue Code of 1986, as amended (the "Code")) under Section 4999 of the Code as a result of an acceleration of the vesting of options or for any other reason, the Company shall have an absolute and unconditional obligation to pay the Executive in accordance with the terms of this Section 7 the expected amount of such taxes. In addition, the Company shall have an absolute and unconditional obligation to pay the Executive such additional amounts as are necessary to place the Executive in the exact same financial position that he would have been in if he had not incurred any expected tax liability under Section 4999 of the Code; provided that the Company shall in no event pay the Executive any amounts with respect to any penalties or interest due under any provision of the Code. The determination of the exact amount, if any, of any expected "excess parachute payments" and any expected tax liability under Section 4999 of the Code shall be made by the nationally-recognized independent accounting firm selected by the Executive. The fees and expenses of such accounting firm shall be paid by the Company in advance. The determination of such accounting firm shall be final and binding on the parties. The Company irrevocably agrees to pay to the Executive, in immediately available funds to an account designated in writing by the Executive, any amounts to be paid under this Section 7 within two days after receipt by the Company of written notice from the accounting firm which sets forth such accounting firm's determination. In addition, in the event that such payments are not sufficient to pay all excise taxes on "excess parachute payments" under Section 4999 of the Code as a result of an acceleration of the vesting of options or for any other reason and to place the Executive in the exact same financial position that he would have been in if he had not incurred any expected tax liability under Section 4999 of the Code as a result of a change in control, then the Company shall have an absolute and unconditional obligation to pay the Executive such additional amounts as may be necessary to pay such excise taxes and place the Executive in the exact same financial position that he would have been had he not incurred any tax liability as a result of a change in control under the Code. Notwithstanding the foregoing, in the event that a written ruling (whether public or private) of the Internal Revenue Service ("IRS") is obtained by or on behalf of the Company or the Executive, which ruling expressly provides that the Executive is not required to pay, or is entitled to a refund with respect to, all or any portion of such excise taxes or additional amounts, the Executive shall promptly reimburse the Company in an amount equal to all amounts paid to the Executive pursuant to this Section 7 less any excise taxes or additional amounts which remain payable by, or are not refunded to, the Executive after giving effect to such IRS ruling. Each of the Company and the Executive agrees to promptly notify the other party if it receives any such IRS ruling.

(b) The provisions of this Section 7 shall survive any termination of this Agreement.

8. Nondisclosure of Confidential Information. (a) The Executive acknowledges that in the course of his employment he will occupy a position of trust and confidence. The Executive shall not, except as may be required to perform his duties or as required by applicable law, disclose to others or use, whether directly or indirectly, any Confidential Information.

(b) "Confidential Information" shall mean information about the Company's business and operations that is not disclosed by the Company for financial reporting purposes and that was learned by the Executive in the course of his employment by the Company, including, without limitation, any proprietary knowledge, patents, trade secrets, data, formulae, information and client and customer lists and all papers and records (including computer records) of the documents containing such

Confidential Information. The Executive acknowledges that such Confidential Information is specialized, unique in nature and of great value to the Company, and that such information gives the Company a competitive advantage. The Executive agrees to deliver or return to the Company, at the Company's request at any time or upon termination or expiration of his employment or as soon as possible thereafter, all documents, computer tapes and disks, records, lists, data, drawings, prints, notes and written information (and all copies thereof) furnished by the Company or prepared by the Executive in the course of his employment by the Company.

(c) The provisions of this Section 8 shall survive any termination of this Agreement.

9. Covenant Not to Compete. For two years following the end of the Term or, in the event the Executive has been terminated without Cause or has resigned

for Good Reason, for one year following such termination without Cause or resignation for Good Reason (the "Restricted Period"), the Executive will not, directly or indirectly, enter into the employment of, render services to, or acquire any interest whatsoever in (whether for his own account as an individual proprietor, or as a partner, associate, stockholder, officer, director, consultant, trustee or otherwise), or otherwise assist, any person or entity engaged in any operations in North America involving the transmission of radio entertainment programming in competition with the Company; provided, that nothing in this Agreement shall prevent the purchase or ownership by the Executive by way of investment of up to five percent of the shares or equity interest of any corporation or other entity. Without limiting the generality of the foregoing, the Executive agrees that during the Restricted Period, the Executive will not call on or otherwise solicit business or assist others to solicit business from any of the customers or potential customers of the Company as to any product or service that competes with any product or service provided or marketed by or actually under development by the Company at the end of the Term. The Executive agrees that during the Restricted Period he will not solicit or assist others to solicit the employment of or hire any employee of the Company without the prior written consent of the Company.

10. Remedies. The Executive and Company agree that damages for breach of any of the covenants under Sections 8 and 9 above will be difficult to determine and inadequate to remedy the harm which may be caused thereby, and therefore consent that these covenants may be enforced by temporary or permanent injunction without the necessity of bond. The Executive believes, as of the date of this Agreement, that the provisions of this Agreement are reasonable and that the Executive is capable of gainful employment without breaching this Agreement. However, should any court or arbitrator decline to enforce any provision of Section 8 or 9 of this Agreement, this Agreement shall, to the extent applicable in the circumstances before such court or arbitrator, be deemed to be modified to restrict the Executive's competition with the Company to the maximum extent of time, scope and geography which the court or arbitrator shall find enforceable, and such provisions shall be so enforced.

11. Indemnification. The Company shall indemnify the Executive to the full extent provided in the Company's Amended and Restated Articles of Incorporation and Amended and Restated Bylaws and the law of the State of Delaware in connection with his activities as an officer of the Company.

12. Entire Agreement. The provisions contained herein constitute the entire agreement between the parties with respect to the subject matter hereof and supersede any and all prior agreements, understandings and communications between the parties, oral or written, with respect to such subject matter.

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13. Modification. Any waiver, alteration, amendment or modification of any provisions of this Agreement shall not be valid unless in writing and signed by both the Executive and the Company.

14. Severability. If any provision of this Agreement shall be declared to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall not affect the remaining provisions hereof, which shall remain in full force and effect.

15. Assignment. The Executive may not assign any of his rights or delegate any of his duties hereunder without the prior written consent of the Company. The Company may not assign any of its rights or delegate any of its obligations hereunder.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors in interest of the Executive and the Company.

17. Notice. All notices and other communications required or permitted hereunder shall be made in writing and shall be deemed effective when initially transmitted by courier or facsimile transmission and five days after mailing by registered or certified mail:

if to the Company:

Sirius Satellite Radio Inc.  
1221 Avenue of the Americas  
36th Floor  
New York, New York 10020  
Attention: General Counsel  
Telecopier: (212) 584-5353

if to the Executive:

Patrick L. Donnelly  
Address on file in the offices  
of the Company

or to such other person or address as either of the parties shall furnish in writing to the other party from time to time.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within the State of New York.

19. Non-Mitigation. The Executive shall not be required to mitigate damages or seek other employment in order to receive compensation or benefits under Section 6 or Section 7 of this Agreement; nor shall the amount of any benefit or payment provided for under Section 6 or Section 7 of this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer.

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20. Arbitration. (a) The Executive and the Company agree that if a dispute arises concerning or relating to the Executive's employment with the Company, or the termination of the Executive's employment, such dispute shall be submitted to binding arbitration under the rules of the American Arbitration Association in effect at the time such dispute arises. The arbitration shall take place in New York, New York, and both the Executive and the Company agree to submit to the jurisdiction of the arbitrator selected in accordance with the American Arbitration Association rules and procedures. Except as provided for below, the Executive and the Company agree that this arbitration procedure will be the exclusive means of redress for any disputes relating to or arising from the Executive's employment with the Company or his termination, including disputes over rights provided by federal, state, or local statutes, regulations, ordinances, and common law, including all laws that prohibit discrimination based on any protected classification. The parties expressly waive the right to a jury trial, and agree that the arbitrator's award shall be final and binding on both parties, and shall not be appealable. The arbitrator shall have discretion to award monetary and other damages, and any other relief that the arbitrator deems appropriate and is allowed by law.

(b) The Company shall pay the costs of any arbitration or other legal proceedings under this Agreement if the Executive prevails in such arbitration on at least one substantive issue.

(c) The Company and the Executive agree that the sole dispute that is excepted from Section 20(a) is an action seeking injunctive relief from a court of competent jurisdiction regarding enforcement and application of Sections 8 and 9 of this Agreement, which action may be brought in addition to, or in place of, an arbitration proceeding in accordance with Section 20(a).

21. Counterparts. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

22. Executive's Representations. Executive hereby represents and warrants to Company that he is not now under any contractual or other obligation that is inconsistent with or in conflict with this Agreement or that would prevent, limit, or impair the Executive's performance of his or her obligations under this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SIRIUS SATELLITE RADIO INC.

By: /s/ Joseph P. Clayton

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Joseph P. Clayton  
Chief Executive Officer

/s/ Patrick L. Donnelly

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Patrick L. Donnelly

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## AGREEMENT AND RELEASE

This Agreement and Release, dated as of \_\_\_\_\_, 200\_ (this "Agreement"), is entered into by and between PATRICK L. DONNELLY (the "Executive") and SIRIUS SATELLITE RADIO INC., and its subsidiaries and affiliated companies (collectively, the "Company").

The purpose of this Agreement is to completely and finally settle, resolve, and forever extinguish all obligations, disputes and differences arising out of the Executive's employment with and separation from Company.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Executive and the Company hereby agree as follows:

1. The Executive's employment with the Company is terminated as of \_\_\_\_\_, 200\_ (the "Termination Date").

2. The Company and the Executive agree that the Executive shall be provided severance pay and other benefits in accordance with the terms of Section 6(f) of the Employment Agreement, dated as of November 8, 2004 (the "Employment Agreement"), between the Executive and the Company; provided that no such severance shall be paid if the Executive revokes this Agreement pursuant to Section 4 below. The Executive acknowledges and agrees that he is entering into this Agreement in consideration of such severance and the Company's agreements set forth herein.

3. The Executive, for himself, and for his heirs, attorneys, agents, spouse and assigns, hereby waives, releases and forever discharges the Company and its predecessors, successors, and assigns, if any, as well as its and their officers, directors and employees, stockholders, agents, servants, representatives, and attorneys, and the predecessors, successors, heirs and assigns of each of them (collectively "Released Parties"), from any and all grievances, claims, demands, causes of action, obligations, damages and/or liabilities of any nature whatsoever, whether known or unknown, suspected or claimed, which the Executive ever had, now has, or claims to have against the Released Parties, by reason of any act or omission occurring before the date hereof, including, without limiting the generality of the foregoing, (a) any act, cause, matter or thing stated, claimed or alleged, or which was or which could have been alleged in any manner against the Released Parties prior to the execution of this Agreement and (b) all claims for any payment under the Employment Agreement; provided that nothing contained in this Agreement shall affect the Executive's rights (i) to indemnification from the Company as provided in the Employment Agreement or otherwise; (ii) to coverage under the Company's insurance policies covering officers and director; (iii) to other benefits which by their express terms extend beyond the Executive's termination of employment; and (iv) under this Agreement. Without limiting the generality of the foregoing, the Executive expressly releases the Released Parties from all claims for discrimination, harassment and/or retaliation, under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, the New York State Human Rights Law, as amended, as well as any and all claims arising out of any alleged contract of employment, whether written, oral, express or implied, or any other federal, state or local civil or human rights or labor law, ordinances, rules, regulations, guidelines, statutes, common law, contract or tort law, arising out of or relating to the Executive's employment with

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and/or separation from the Company, and/or any events occurring prior to the execution of this Agreement.

4. The Executive also specifically waives all rights or claims that he has or may have under the Age Discrimination In Employment Act of 1967, 29 U.S.C. 'SS' 'SS' 621-634, as amended ("ADEA"). In accordance with the ADEA, the Company specifically advises the Executive that: (1) he may and should consult an attorney before signing this Agreement, (2) he has twenty-one (21) days to consider this Agreement, and (3) he has seven (7) days after signing this Agreement to revoke this Agreement.

5. The Company, for itself, and for its predecessors, successors, and assigns, if any, as well as its and their officers, directors and employees, stockholders, agents, servants, representatives, and attorneys, and the predecessors, successors, heirs and assigns of each of them, hereby waives, releases and forever discharges the Executive and his heirs, attorneys, agents, spouse and assigns (collectively, "Executive Released Parties") from any and all grievances, claims, demands, causes of action, obligations, damages and/or liabilities of any nature whatsoever, which the Company ever had, now has, or claims to have against the Executive Released Parties by reason of any act or

omission occurring before the date hereof including, without limiting the generality of the foregoing, any act, cause, matter or thing stated, claimed or alleged of which the Company has actual knowledge which was or could have been alleged in any manner against the Executive Released Parties prior to the execution of this Agreement.

6. This release does not affect or impair the Executive's rights with respect to workman's compensation or similar claims under applicable law or any claims under medical, dental, disability, life or other insurance arising prior to the date hereof.

7. The Executive warrants that he has not made any assignment, transfer, conveyance or alienation of any potential claim, cause of action, or any right of any kind whatsoever, including but not limited to, potential claims and remedies for discrimination, harassment, retaliation, or wrongful termination, and that no other person or entity of any kind has had, or now has, any financial or other interest in any of the demands, obligations, causes of action, debts, liabilities, rights, contracts, damages, costs, expenses, losses or claims which could have been asserted by the Executive against the Company.

8. The Executive shall not make any disparaging remarks about the Company, or its officers, agents, employees, practices or products; provided that the Executive may provide truthful and accurate facts and opinions about the Company where required to do so by law. Neither the Company nor any of its officers shall make any disparaging remarks, written or oral, about the Executive; provided that the Company and its officers may provide truthful and accurate facts and opinions about the Executive where required to do so by law. The restrictions contained in this Section 8 shall be of no force and effect if either the Company or any of its officers or the Executive is required by law to offer facts or opinions regarding the other.

9. The parties acknowledge that this Agreement is a settlement of disputed potential claims and is not an admission of liability or of the accuracy of any alleged fact or claim. The Company expressly denies any violation of any federal, state, or local statute, ordinance, rule, regulation, order, common law or other law in connection with the employment and termination of employment of the Executive. The parties expressly agree that this Agreement shall not be construed as an admission by

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any of the parties of any violation, liability or wrongdoing, and shall not be admissible in any proceeding as evidence of or an admission by any party of any violation or wrongdoing.

10. In the event of a dispute concerning the enforcement of this Agreement, the finder of fact shall have the discretion to award the prevailing party reasonable costs and attorneys' fees incurred in bringing or defending an action, and shall award such costs and fees to the Executive in the event the Executive prevails on the merits of any action brought hereunder.

11. The parties declare and represent that no promise, inducement, or agreement not expressed herein has been made to them.

12. This Agreement in all respects shall be interpreted, enforced and governed under the laws of the State of New York and any applicable federal laws relating to the subject matter of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. This Agreement shall be construed as if jointly prepared by the Executive and the Company. Any uncertainty or ambiguity shall not be interpreted against any one party.

13. This Agreement and the Employment Agreement contains the entire agreement of the parties as to the subject matter hereof. No modification or waiver of any of the provisions of this Agreement shall be valid and enforceable unless such modification or waiver is in writing and signed by the party to be charged, and unless otherwise stated therein, no such modification or waiver shall constitute a modification or waiver of any other provision of this Agreement (whether or not similar) or constitute a continuing waiver.

14. The Executive and the Company represent that they have been afforded a reasonable period of time within which to consider the terms of this Agreement, that they have read this Agreement, and they are fully aware of its legal effects. The Executive and the Company further represent and warrant that they enter into this Agreement knowingly and voluntarily, without any mistake, duress or undue influence, and that they have been provided the opportunity to review this Agreement with counsel of their own choosing. In making this Agreement, each party relies upon his or its own judgment, belief and knowledge, and has not been influenced in any way by any representations or statements not set forth herein regarding the contents hereof by the entities who are hereby released, or by anyone representing them.

15. The parties agree that this Agreement may be executed in counterparts and as executed shall constitute one Agreement, binding on all parties. The parties further agree that execution of this Agreement may be accomplished by receipt of facsimile signatures of the parties. This Agreement shall be of no force or effect until executed by all the signatories.

16. Should any provision of this Agreement be declared or be determined by a forum with competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SIRIUS SATELLITE RADIO INC.

By: -----

Name:

Title:

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Patrick L. Donnelly

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Joseph P. Clayton, the Chief Executive Officer of Sirius Satellite Radio Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Sirius Satellite Radio Inc. for the period ended September 30, 2004;
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)) 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) 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
  - (c) disclosed in this report any change in the registrant's internal control 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/ Joseph P. Clayton

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Joseph P. Clayton  
Chief Executive Officer  
(Principal Executive Officer)

November 9, 2004

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, David J. Frear, the Executive Vice President and Chief Financial Officer of Sirius Satellite Radio Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Sirius Satellite Radio Inc. for the period ended September 30, 2004;
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)) 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) 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
  - (c) disclosed in this report any change in the registrant's internal control 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

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David J. Frear  
Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)

November 9, 2004

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 Quarterly Report of Sirius Satellite Radio Inc. (the "Company") on Form 10-Q for the period ending September 30, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Joseph P. Clayton, 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/ Joseph P. Clayton

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Joseph P. Clayton  
Chief Executive Officer  
(Principal Executive Officer)

November 9, 2004

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 Quarterly Report of Sirius Satellite Radio Inc. (the "Company") on Form 10-Q for the period ending September 30, 2004 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

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David J. Frear  
Executive Vice President and  
Chief Financial officer  
(Principal Financial Officer)

November 9, 2004

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.