# **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 June 30, 2006

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 a large accelerated filer, an accelerated filer, or a non-accelerated filer (as defined in Exch Large Accelerated Filer ☑ Accelerated Filer □ Non-Accelerated Filer □	ange Act Rule 12b-2).
Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2). 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, \$0.001 par value	1,405,114,644 shares
(Class)	(Outstanding as of August 7, 2006)

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#### SIRIUS SATELLITE RADIO INC. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF OPERATIONS (In thousands, except per share amounts) (Unaudited)

For the Three Months Ended June 30, For the Six Months Ended June 30, 2006 2005 2006 2005 Revenue: Subscriber revenue, including effects of mail-in rebates \$ 137,636 \$ 49,622 \$ 252,817 \$ 91,526 Advertising revenue, net of agency fees 8,125 1,052 15,463 1,586 1,503 2,270 3,096 6,788 Equipment revenue Other revenue 1,221 17 1,674 28 Total revenue 150,078 52,194 276,742 95,410 Operating expenses (1): Cost of services (excludes depreciation shown separately below): Satellite and transmission 18,496 7,097 26,699 14,469 Programming and content 76,735 20,819 382,979 49,985 Customer service and billing 13,863 7,864 29,948 17,495 Cost of equipment 3,467 1,952 6,932 2,928 61,676 41,516 103,174 90,068 Sales and marketing 130,563 249,606 Subscriber acquisition costs 81,226 154,547 44,561 General and administrative 34,558 22,452 68,208 Engineering, design and development 15,454 19,270 35,166 37,117 24,580 50,671 49,081 Depreciation 25,738 Total operating expenses 380,550 226,776 953,383 460,251 (230,472) (174,582) Loss from operations (676,641) (364,841)Other income (expense): Interest and investment income 8.873 4,790 18,810 9.277 Interest expense (15,660)(7,201)(32,784)(14,526)Equity in net loss of affiliate (4,445)9 7 52 Other income 19 Total other income (expense) (6,778) (2,404) (18,400) (5,197)Loss before income taxes (237,250)(176,986) (695,041) (370,038)Income tax expense (578)(560) (1,331)(1,120)(371,158) Net loss (237,828)(177,546)(696,372) \$ Net loss per share (basic and diluted) \$ (0.50)\$ (0.28)(0.17)(0.13)Weighted average common shares outstanding (basic and diluted) 1,404,022 1,324,270 1,395,549 1.319.318 (1) Amounts related to equity granted to third parties and employees included in other operating expenses were as follows: 429 1,712 988 Satellite and transmission 810 9,938 Programming and content 23,724 5,050 273,524 Customer service and billing 448 204 126 265 Sales and marketing 5,067 7,276 7,269 20,706 Subscriber acquisition costs 21,900 12,533 31,799 18,761 General and administrative 12,905 8,332 27,411 15,609 Engineering, design and development 2,679 7,484 9,712 13,669 Total equity granted to third parties and employees \$ 67,289 \$ 41,230 \$ 351,875 \$ 79,936

See Notes to Unaudited Consolidated Financial Statements.

## SIRIUS SATELLITE RADIO INC. AND SUBSIDIARIES CONSOLIDATED BALANCE SHEETS (In thousands, except share and per share amounts)

		June 30, 2006		December 31, 2005		
		(Unaudited)				
ASSETS						
Current assets:						
Cash and cash equivalents	\$	534,963	\$	762,007		
Marketable securities		48,625		117,250		
Accounts receivable, net		18,922		31,688		
Inventory		25,110		14,256		
Prepaid expenses		52,776		18,248		
Restricted investments		25,165		25,165		
Other current assets		43,597		42,834		
Total current assets		749,158		1,011,448		
Property and equipment, net		794,441		828,357		
FCC license		83,654		83,654		
Restricted investments, net of current portion		83,150		82,450		
Deferred financing fees		14,908		16,303		
Other long-term assets		86,085		63,150		
Total assets	\$	1,811,396	\$	2,085,362		
LIABILITIES AND STOCKHOLDERS' EQUITY Current liabilities:						
	0	245.070	Φ.	221.052		
Accounts payable and accrued expenses	\$	345,979	\$	331,953		
Accrued interest		24,703		23,546		
Deferred revenue	_	310,830		251,468		
Total current liabilities		681,512		606,967		
Long-term debt		1,083,929		1,084,437		
Deferred revenue, net of current portion		70,964		56,479		
Other long-term liabilities		32,114		12,511		
Total liabilities		1,868,519		1,760,394		
Stockholders' equity:						
Common stock, \$0.001 par value: 2,500,000,000 shares authorized, 1,404,780,483 and 1,346,226,851 shares issued and outstanding at June						
30, 2006 and December 31,2005, respectively		1,405		1,346		
Additional paid-in capital		3,366,697		3,079,169		
Deferred compensation		_		(26,694)		
Accumulated deficit		(3,425,225)		(2,728,853)		
Total stockholders' (deficit) equity		(57,123)		324,968		
Total liabilities and stockholders' equity	\$	1,811,396	\$	2,085,362		

See Notes to Unaudited Consolidated Financial Statements.

# SIRIUS SATELLITE RADIO INC. AND SUBSIDIARIES CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY (In thousands, except share and per share amounts) (Unaudited)

Common Stock Additional Paid-In Capital Deferred Total Shares Amount Compensation Deficit Balances, December 31, 2005 1,346,226,851 1,346 3,079,169 (26,694) (2,728,853) 324,968 (696,372) (696,372) Issuance of common stock to employees and employee benefit plans 19,828,241 20 16,618 16,638 Issuance of common stock to third parties 34,467,869 35 224,917 224,952 Compensation in connection with the issuance of stock-based awards 69,403 69,403 Reversal of deferred compensation related to the adoption of Statement of Financial Accounting Standards ("SFAS") No. 123R
Exercise of options, \$0.47 to \$3.93 per share
Exercise of warrants, \$2.392 per share
Exchange of 3½% Convertible Notes due 2008, (26,694) 26,694 2 2 1,934,521 2,786 2,784 1,954,886 (2) 368,115 502 502 including accrued interest

See Notes to Unaudited Consolidated Financial Statements.

1,405

3,366,697

(3,425,225)

\$

(57,123)

1,404,780,483

Balances, June 30, 2006

# SIRIUS SATELLITE RADIO INC. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF CASH FLOWS (In thousands) (Unaudited)

For the Six Months Ended June 30,

(371,158) 49,081 1,523 2,282
49,081 1,523
49,081 1,523
1,523
1,523
2,282
_
252
_
79,936
1,120
, ,
16
(6,056)
(4,433
(7,554)
478
26,153
(126)
50,223
(3,542)
(181,805)
(10,863)
59
(6,291)
10,997
4,835
(1,263)
6,104
(8)
6,096
(176,972)
753,891
576,919

See Notes to Unaudited Consolidated Financial Statements.

# SIRIUS SATELLITE RADIO INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Dollar amounts in thousands, unless otherwise stated)
(Unaudited)

#### 1. Business

We are a satellite radio provider in the United States. We currently broadcast 133 channels of programming to listeners across the country. We offer 69 channels of 100% commercial-free music and feature 64 channels of sports, news, talk, entertainment, traffic and weather for a monthly subscription fee of \$12.95.

We broadcast through our proprietary satellite radio system, which currently consists of three orbiting satellites, 139 terrestrial repeaters that receive and retransmit our signal, a satellite uplink facility and our studios. Subscribers receive our service through SIRIUS radios, which are sold by automakers, consumer electronics retailers, mobile audio dealers and through our website. Subscribers can also receive our music channels and certain other channels over the Internet. As of June 30, 2006, we had 4,678,207 subscribers.

Our music channels are also available to DISH satellite television subscribers and certain of our music channels are offered to Sprint subscribers over multi-media handsets. We also offer traffic and weather data services for a separate fee. Subscribers to DISH satellite television, Sprint and our traffic and weather data services are not included in our subscriber count.

In 2005, SIRIUS Canada Inc., a Canadian corporation owned by us, Canadian Broadcasting Corporation and Standard Broadcasting Corporation, received a license from the Canadian Radio-television and Telecommunications Commission to offer a satellite radio service in Canada. In December 2005, SIRIUS Canada launched service in Canada with 100 channels of commercial-free music and news, sports, talk and entertainment programming, including 10 channels of Canadian content. Subscribers to the SIRIUS Canada service are not included in our subscriber count.

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

The accompanying unaudited consolidated financial statements of Sirius Satellite Radio Inc. and subsidiaries 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 unaudited consolidated financial statements, management makes estimates and assumptions that affect the amounts reported and related disclosures. Estimates, by their nature, are based on judgment 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 June 30, 2006 and December 31, 2005, and for the three and six months ended June 30, 2006 and 2005, have been recorded. The results of operations for the three and six months ended June 30, 2006 are not necessarily indicative of the results that may be expected for the full year. Our unaudited consolidated financial statements should be read together with our consolidated financial statements and footnotes contained in our Annual Report on Form 10-K for the year ended December 31, 2005.

# 3. Summary of Significant Accounting Policies

#### Stock-Based Compensation

Effective January 1, 2006, we adopted the provisions of SFAS No. 123 (revised 2004), "Share-Based Payment" ("SFAS No. 123R"), using the modified prospective transition method. Prior periods are not restated under this transition method. The stock-based compensation cost recognized beginning January 1, 2006 includes

#### SIRIUS SATELLITE RADIO INC. AND SUBSIDIARIES

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued) (Dollar amounts in thousands, unless otherwise stated) (Unaudited)

compensation cost for all stock-based awards granted to employees and members of our board of directors (i) prior to, but not vested as of, January 1, 2006 based on the grant date fair value originally estimated in accordance with the provisions of SFAS No. 123, "Accounting for Stock-Based Compensation," and (ii) subsequent to December 31, 2005 based on the grant date fair value estimated in accordance with the provisions of SFAS No. 123R. Compensation cost under SFAS No. 123R is recognized ratably using the straight-line attribution method over the expected vesting period.

SFAS No. 123R requires forfeitures to be estimated on the grant date and revised in subsequent periods if actual forfeitures differ from those estimates. Prior to the adoption of SFAS No. 123R we accounted for forfeitures as they occurred. For pro forma disclosure purposes in accordance with SFAS No. 123, we estimated forfeitures. As of January 1, 2006, the cumulative effect of adopting the estimated forfeiture method was not significant.

Prior to January 1, 2006, we used the intrinsic value method to measure the compensation cost of stock-based awards granted to employees and members of our board of directors in accordance with Accounting Principles Board Opinion ("APB") No. 25, "Accounting for Stock Issued to Employees." Accordingly, we recorded 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 was amortized to expense over the vesting period. We accounted for modifications to stock-based awards in accordance with Financial Accounting Standards Board Interpretation ("FIN") No. 44, "Accounting for Certain Transactions Involving Stock Compensation." FIN No. 44 provided that when the modification of a stock-based award occured, a new measurement date resulted because the modification allowed an employee to vest in an award that would have otherwise been forfeited pursuant to the original terms. In accordance with FIN No. 44, we also recorded compensation charges or benefits related to repriced stock options based on the market value of our common stock until the repriced stock options were exercised, forfeited or expired.

The following table reflects net loss and net loss per share had stock-based compensation to employees and members of our board of directors been recorded based on the fair value method under SFAS No. 123 for the three and six months ended June 30, 2005:

	For the Three Months Ended June 30, 2005			
Net loss—as reported Stock-based compensation to employees and members of our board of directors	\$	(177,546) 13,853	\$	(371,158) 27,304
Stock-based compensation to employees and members of our board of directors —pro forma		(23,905)		(50,551)
Net loss—pro forma	\$	(187,598)	\$	(394,405)
Net loss per share:	e	(0.12)	¢.	(0.28)
Basic and diluted—as reported Basic and diluted—pro forma	\$	(0.13) (0.14)	\$ \$	(0.28) (0.30)

Under SFAS No. 123R, we recognized \$18,321 and \$40,271 of compensation cost for stock-based awards granted to employees and members of our board of directors for the three and six months ended June 30, 2006, respectively. Total unrecognized compensation related to unvested stock-based awards granted to employees and members of our board of directors at June 30, 2006, net of estimated forfeitures, is \$130,857 and is expected to be recognized over a weighted-average period of three years.

Prior to January 1, 2006, we accounted for stock-based awards granted to non-employees, other than non-employee members of our board of directors, at fair value in accordance with SFAS No. 123. Effective January 1, 2006, we account for such awards at fair value in accordance with SFAS No. 123R and SEC guidance contained in Staff Accounting Bulletin ("SAB") No. 107. The fair value of equity instruments granted to non-employees is measured in accordance with Emerging Issues Task Force ("EITF") No. 96-18, "Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services." The final measurement date of equity instruments with performance criteria is the date that each performance commitment for such equity instrument is satisfied.

Stock-based awards granted to employees, non-employees and members of our board of directors generally include warrants, stock options, restricted stock and restricted stock units. Charges associated with such stock-based awards are referred to by us as equity granted to third parties and employees.

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

Fair value determined using Black-Scholes varies based on assumptions used for the expected life, expected stock price volatility and risk-free interest rates. For the six months ended June 30, 2005, we used historical volatility of our stock over a period equal to the expected life of the warrants and options to estimate fair value. SAB No. 107 favors using a market value of volatility. We estimated the fair value of awards granted during the six months ended June 30, 2006 using the implied volatility of actively traded options on our stock. We believe that implied volatility is more representative of future stock price trends than historical volatility. The expected life assumption represents the weighted-average period stock-based awards are expected to remain outstanding. These expected life assumptions are established through a review of historical exercise behavior of stock-based award grants with similar vesting periods. Where historical patterns do not exist contractual terms are used. The risk-free interest rate represents the daily treasury yield curve rate at the reporting date based on the closing market bid yields on actively traded U.S. treasury securities in the over-the-counter market for the expected term. Our assumptions may change in future periods.

The following table summarizes the weighted-average assumptions used to compute reported and pro forma stock-based compensation to employees for the periods set forth below:

	For the Three Ended Jun		For the Six Months Ended June 30,		
	2006	2005	2006	2005	
		(pro forma)	<u> </u>	(pro forma)	
Risk-free interest rate	4.97%	3.87%	4.10%	3.88%	
Expected life of options—years	4.45	5.73	4.45	5.44	
Expected stock price volatility	60%	112%	60%	113%	
Expected dividend yield	N/A	N/A	N/A	N/A	

The following table summarizes the range of assumptions used to compute reported and pro forma stock-based compensation to third parties for the periods set forth below:

		For the Three Months Ended June 30,		onths 30,
	2006	2006 2005		2005
Risk-free interest rate	4.87-5.23%	3.32-4.37%	4.29-5.23%	2.83-4.50%
Expected life of options—years	1.67-10.00	1.00-9.36	1.67-10.00	1.00-9.45
Expected stock price volatility	60%	58-116%	60%	57-116%
Expected dividend yield	N/A	N/A	N/A	N/A
	7			

SFAS No. 123R changes the presentation of realized excess tax benefits associated with the exercise of stock options in the statements of cash flows. Excess tax benefits are realized tax benefits from tax deductions for the exercise of stock options in excess of the deferred tax asset attributable to stock compensation expense for such options. Prior to the adoption of SFAS No. 123R, such realized tax benefits were required to be presented as operating cash flows. SFAS No. 123R requires such realized tax benefits to be presented as part of cash flows from financing activities. No income tax benefits have been realized from stock option exercises during the three and six months ended June 30, 2006 and 2005 because a valuation allowance was maintained for all net deferred tax assets.

#### Research and Development Costs

Research and development costs are expensed as incurred. Research and development costs for the three months ended June 30, 2006 and 2005 were \$6,749 and \$8,371, respectively, and \$14,144 and \$15,828 for the six months ended June 30, 2006 and 2005, respectively. These costs are included in engineering, design and development expenses in our accompanying unaudited consolidated statements of operations.

#### Net (Loss) Income Per Share

We compute net (loss) income per share in accordance with SFAS No. 128, "Earnings Per Share." Basic net (loss) income per share is calculated using the weighted average common shares outstanding during each reporting period. Diluted net (loss) income per share adjusts the weighted average common shares outstanding 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 190,000,000 and 200,000,000 for the three and six months ended June 30, 2006, respectively, and 227,000,000 and 233,000,000 for the three and six months ended June 30, 2005, 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 component of our other comprehensive loss. Comprehensive loss for the three months ended June 30, 2006 and 2005 was \$237,828 and \$177,546, respectively, and \$696,372 and \$371,134 for the six months ended June 30, 2006 and 2005, respectively.

#### 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 certificates of deposit and auction rate securities. The basic objectives of our investment policy are the preservation of capital, maintaining sufficient liquidity to meet operating requirements and maximizing yield. We classify our marketable securities as available-for-sale securities are carried at fair market value. Unrealized gains and losses are included in accumulated other comprehensive (loss) income as a separate component of stockholders' equity. Realized gains and losses, dividends and interest income, including amortization of the premium and discount arising at purchase, are included in interest and investment income. The specific-identification method is used to determine the cost of all securities and the basis by which amounts are reclassified from accumulated comprehensive (loss) income into earnings. While the underlying securities of auction rate securities have contractual maturities of more than 20 years, the interest rates on such securities reset at intervals of 28 or 35 days. Auction rate securities are priced and subsequently trade as short-term investments because of such interest rate reset feature.

We received proceeds from the sale or maturity of marketable securities of \$177,125 and \$4,835 for the six months ended June 30, 2006 and 2005, respectively. There were no unrealized holding gains or losses on marketable securities as of June 30, 2006 and December 31, 2005.

#### Restricted Investments

As of June 30, 2006 and December 31, 2005, short-term restricted investments of \$25,165 for both periods included certificates of deposit placed in escrow primarily for the benefit of a third party pursuant to a programming agreement.

As of June 30, 2006 and December 31, 2005, long-term restricted investments of \$83,150 and \$82,450, respectively, included certificates of deposit and money market funds deposited in escrow for the benefit of third parties pursuant to programming agreements and certificates of deposit placed in escrow to secure our reimbursement obligations under letters of credit issued for the benefit of lessors of office space.

#### Property and Equipment

Property and equipment is stated at cost and depreciated on a straight-line basis over the estimated useful lives of the related assets, which range from 2 to 30 years. Our satellite system is depreciated on a straight-line basis over the respective remaining useful lives of our satellites from the date we launched our service in February 2002, or in the case of our spare satellite, from the date it was delivered to ground storage in April 2002. Leasehold improvements and equipment under capital leases is depreciated using the straight-line method over the lesser of the lease term or the estimated useful life. We capitalize a portion of the interest on funds borrowed to finance the construction and launch of our satellites. Capitalized interest is recorded as part of the asset's cost and depreciated over the satellite's useful life. Capitalized interest costs for the three and six months ended June 30, 2006 were \$1,397 for both periods.

The expected useful lives of our in-orbit satellites were originally 15 years from the date they were placed into orbit. In June 2006, we entered into an agreement with Space Systems/Loral for the design and construction of a new satellite. In connection with our new satellite agreement, we adjusted the useful lives of two of our in-orbit satellites to 13 years to reflect the way we intend to operate the constellation. We continue to expect our spare satellite to operate effectively for 15 years from the date of launch.

Our satellites have experienced circuit failures on their solar arrays. We continue to monitor the operating condition of our satellites. If other events or circumstances indicate that the useful lives of our satellites have changed we will modify the depreciable life accordingly.

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

In connection with the execution of our agreement to build a new satellite, we wrote-off certain satellite long-lead time parts purchased in 1999 that we will no longer need.

#### Reclassifications

Certain amounts in the prior period unaudited consolidated financial statements have been reclassified to conform to the current period presentation, including the reclassification of equity granted to third parties and employees from a separate line item disclosure to being included in other operating expense line items in order to comply with the requirements of SFAS No. 123R.

#### Recent Accounting Pronouncements

In June 2006, the EITF issued EITF No. 06-3, "How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (That Is, Gross versus Net Presentation)," to clarify diversity in practice on the presentation of different types of taxes in the financial statements. The EITF concluded that for taxes within the scope of the issue, a company may include charges to customers for taxes within revenues and the charge for the taxing authority within cost of sales, or, alternatively, it may net the charge to the customer and the charge from the taxing authority. If taxes subject to EITF No. 06-3 are significant, a company is required to disclose its accounting policy for presenting taxes and the amounts of such taxes that are recognized on a gross basis. EITF No. 06-3 is effective for the first interim reporting period beginning after December 15, 2006. We will adopt EITF No. 06-3 will have a material impact on our consolidated results of operations or financial position.

In June 2006, the FASB issued FIN No. 48, "Accounting for Uncertainty in Income Taxes – an interpretation of FASB Statement No. 109," which prescribes a recognition threshold and measurement attribute for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return, as

well as criteria on derecognition, and classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN No. 48 is effective for fiscal years beginning after December 15, 2006. We will adopt FIN No. 48 effective January 1, 2007. We do not believe the adoption of FIN No. 48 will have a material impact on our consolidated results of operations or financial position.

#### 4. Subscriber Revenue

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

Subscriber revenue consists of the following:

	For the Three Months Ended June 30,			For the Six Months Ended June 30,			
2006			2005		2006		2005
\$	136,020	\$	50,057	\$	254,011	\$	90,655
	3,647		1,346		7,371		2,884
	(2,031)		(1,781)		(8,565)		(2,013)
\$	137,636	\$	49,622	\$	252,817	\$	91,526
	\$ \$	\$ 136,020 3,647 (2,031)	\$ 136,020 \$ 3,647 (2,031)	Ended June 30,  2006  2005  \$ 136,020 \$ 50,057  3,647 1,346 (2,031) (1,781)	Ended June 30,  2006  2005  \$ 136,020 \$ 50,057 \$ 3,647 1,346 (2,031) (1,781)	Ended June 30, Ended June 30, 2006  2006  \$ 136,020 \$ 50,057 \$ 254,011	Ended June 30,           2006         2005         2006           \$ 136,020         \$ 50,057         \$ 254,011         \$ 3,647           1,346         7,371         (2,031)         (1,781)         (8,565)

## 5. Supplemental Cash Flow Disclosures

The following represents supplemental cash flow information:

	Ended June 30,			
		2006		2005
Cash paid for interest	\$	31,470	\$	13,127
Supplemental non-cash operating activities:				
Common stock issued in satisfaction of accrued compensation		7,243		4,824
Supplemental non-cash investing and financing activities:				
Common stock issued in exchange of 3½% Convertible Notes due 2008, including accrued interest		502		_
Common stock issued to third parties		224,952		2,177

For the Six Months

#### 6. Long-Term Debt

Long-term debt consists of the following:

		As	of	
	onversion Price per share)	June 30, 2006		ember 31, 2005
9 <sup>5</sup> / <sub>8</sub> % Senior Notes due 2013	N/A	\$ 500,000	\$	500,000
31/4% Convertible Notes due 2011	\$ 5.30	230,000		230,000
2½% Convertible Notes due 2009	4.41	300,000		300,000
3½% Convertible Notes due 2008	1.38	52,185		52,693
83/4% Convertible Subordinated Notes due 2009	28.4625	1,744		1,744
Total long-term debt		\$ 1,083,929	\$	1,084,437

# 95/8% Senior Notes due 2013

In August 2005, we issued \$500,000 in aggregate principal amount of our 9/8% Senior Notes due 2013 resulting in net proceeds of \$493,005. Our 9/8% Senior Notes due 2013 mature on August 1, 2013 and interest is payable semi-annually on February 1 and August 1 of each year. The obligations under our 99/8% Senior Notes due 2013 are not secured by any of our assets.

In September 2005, we used proceeds from the issuance of our 9% Senior Notes due 2013 to redeem our outstanding 15% Senior Secured Discount Notes due 2007 and our 14% Senior Secured Notes due 2009, including accrued interest. The obligations under our 15% Senior Secured Discount Notes due 2007 and 14% Senior

Secured Notes due 2009 were secured by liens on certain of our assets. These liens were released in connection with the redemption of the notes.

#### 31/4% Convertible Notes due 2011

In October 2004, we issued \$230,000 in aggregate principal amount of our 31/4% Convertible Notes due 2011 resulting in net proceeds of \$224,813. 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 31/4% Convertible Notes due 2011 mature on October 15, 2011 and interest is payable semi-annually on April 15 and October 15 of each year. The obligations under our 31/4% Convertible Notes due 2011 are not secured by any of our assets.

#### 21/2% Convertible Notes due 2009

In February 2004, we issued \$250,000 in aggregate principal amount of our 21/2% Convertible Notes due 2009 resulting in net proceeds of \$244,625. In March 2004, we issued an additional \$50,000 in aggregate principal amount of our 21/2% 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 21/2% 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 21/2% Convertible Notes due 2009 are not secured by any of our assets.

#### 31/2% Convertible Notes due 2008

In May 2003, we issued \$201,250 in aggregate principal amount of our 3½% Convertible Notes due 2008 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.

During the six months ended June 30, 2006, holders of \$508 in aggregate principal amount of our 3½% Convertible Notes due 2008 presented such notes for conversion in accordance with the terms of the indenture. We issued 368,115 shares of our common stock upon conversion of these notes.

#### Space Systems/Loral Credit Agreement

In June 2006, we entered into a Credit Agreement with Space Systems/Loral. Under the Credit Agreement, Space Systems/Loral has agreed to make loans to us in an aggregate principal amount of up to \$100,000 to finance the purchase of our new satellite. Loans made under the Credit Agreement will be secured by our rights under the Satellite Purchase Agreement with Space Systems/Loral, including our rights to the new satellite. The loans are also entitled to the benefits of a subsidiary guarantee from Satellite CD Radio, Inc., our subsidiary that holds our FCC license, and any future material subsidiary that may be formed by us. The maturity date of the loans is the earliest to occur of (i) April 6, 2009, (ii) 90 days after the new satellite becomes available for shipment and (iii) 30 days prior to the scheduled launch of the new satellite. Any loans made under the Credit Agreement generally will bear interest at a variable rate equal to three-month LIBOR plus 4.75%. The Credit Agreement permits us to prepay all or a portion of the loans outstanding without penalty. We have no current plans to draw under this Credit Agreement.

#### Covenants and Restrictions

Our 95/8% Senior Notes due 2013 and the Credit Agreement require us to comply with certain covenants that restrict our ability to, among other things, (i) incur additional indebtedness, (ii) incur liens, (iii) pay dividends or make certain other restricted payments, investments or acquisitions, (iv) enter into certain transactions with affiliates, (v) merge or consolidate with another person, (vi) sell, assign, lease or otherwise dispose of all or substantially all of our assets, and (vii) make voluntary prepayments of certain debt, in each case subject to exceptions as provided in the 95/8% Senior Notes due 2013 indenture and the Credit Agreement. If we fail to comply with these covenants, our 9/8% Senior Notes due 2013 and any loans outstanding under the Credit Agreement could

become immediately payable and the Credit Agreement could be terminated. At June 30, 2006, we were in compliance with all such covenants.

#### 7. Stockholders' Equity

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

We are authorized to issue 2,500,000,000 shares of our common stock as of June 30, 2006. As of June 30, 2006, approximately 458,783,000 shares of our common stock were reserved for issuance in connection with outstanding convertible debt, warrants, incentive stock plans and common stock to be granted to third parties upon satisfaction of performance targets. During the six months ended June 30, 2006, employees exercised 1,934,521 stock options at exercise prices ranging from \$0.47 to \$3.93 per share, resulting in proceeds to us of \$2,786. Of this amount, \$2,693 was collected as of June 30, 2006. We also collected \$283 in 2006 related to stock option exercises that occurred in 2005.

In January 2006, Howard Stern and his agent were granted an aggregate of 34,375,000 shares of our common stock as a result of certain performance targets that were satisfied in January 2006. We recognized expense associated with these shares of \$224,813 during the six months ended June 30, 2006.

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 transfer restrictions which lapse over time. We recognized expense associated with these shares of \$219 during each of the three months ended June 30, 2006 and 2005, and \$1,860 during each of the six months ended June 30, 2006 and 2005. Of the remaining \$28,970 in common stock value, \$5,852 and \$23,118 are included in other current assets and other long-term assets, respectively, on our accompanying unaudited consolidated balance sheet as of June 30, 2006.

#### Warrants

We have issued warrants to purchase shares of our common stock in connection with distribution and programming agreements and certain debt issuances. As of June 30, 2006, warrants to acquire 129,405,589 shares of our common stock with an average exercise price of \$3.10 were outstanding. These warrants vest over time or upon the achievement of milestones and expire at various times through June 2014. For the three months ended June 30, 2006 and 2005, we recognized expense of \$26,599 and \$24,528, respectively, and \$40,970 and \$46,024 for the six months ended June 30, 2006 and 2005, respectively, in connection with warrants.

#### 8. Benefit Plans

#### Stock-Based Awards

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. The 2003 Plan provides for the grant of stock options, restricted stock, restricted stock units and other stock-based awards that the compensation committee of our board of directors may deem appropriate.

Vesting and other terms of stock-based awards are set forth in the agreements with the individuals receiving the awards. Stock-based awards granted under the 2003 Plan are generally subject to a vesting requirement that includes one or all of the following: (1) over time, generally three to five years from the date of grant; (2) on a specific date in future periods, with acceleration to earlier periods if performance criteria are satisfied; or (3) as certain performance targets set at the time of grant are achieved. Stock-based awards generally expire ten years from the date of grant. Each restricted stock unit entitles the holder to receive one share of our common stock upon vesting.

As of June 30, 2006, approximately 93,581,000 stock options, shares of restricted stock and restricted stock units were outstanding. As of June 30, 2006, approximately 86,283,000 shares of our common stock were available for grant under the 2003 Plan.

The following table summarizes stock option activity under our stock incentive plans for the six months ended June 30, 2006 (shares in thousands):

	Shares	 Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	 Intrinsic Value
Outstanding at beginning of period	87,024	\$ 4.61		
Granted	4,660	5.89		
Exercised	(1,934)	1.44		
Cancelled or expired	(450)	3.47		
Outstanding at end of period	89,300	4.75	6.22	\$ 106,022
Exercisable at end of period	43,010	5.26	4.86	71,701

The weighted average grant date fair value of options granted during the six months ended June 30, 2006 and 2005 was \$3.22 and \$4.51, respectively. The total intrinsic value of stock options exercised during the six months ended June 30, 2006 and 2005 was \$6,841 and \$19,085, respectively.

As of December 31, 2005, we had \$2,073 of deferred compensation in connection with stock options granted to employees and members of our board of directors. Such deferred compensation was reversed to additional paid-in capital in connection with the adoption of SFAS No. 123R. We recognized stock compensation expense associated with stock options of \$14,156 and \$4,578 for the three months ended June 30, 2006 and 2005, respectively, and \$27,701 and \$8,708 for the six months ended June 30, 2006 and 2005, respectively. Stock compensation expense associated with stock options for the three and six months ended June 30, 2005 included a charge of \$479 for an employee that was deemed to benefit from the modification of a stock-based award resulting in a new measurement date.

The following table summarizes the non-vested restricted stock unit activity under our stock incentive plans for the six months ended June 30, 2006 (shares in thousands):

	Shares	Weighted Average Grant Date Fair Value
Outstanding at beginning of period	21,977	2.36
Granted	1,503	5.57
Vested	(19,183)	2.09
Cancelled or expired	(16)	5.71
Outstanding at end of period	4,281	4.68

The weighted average grant date fair value of restricted stock units granted during the six months ended June 30, 2005 was \$5.93. The total intrinsic value of restricted stock units that vested during the six months ended June 30, 2006 and 2005 was \$97,423 and \$10,866, respectively.

As of December 31, 2005, we had \$24,621 of deferred compensation associated with restricted stock and restricted stock units granted to employees and members of our board of directors. Such deferred compensation was reversed to additional paid-in capital in connection with the adoption of SFAS No. 123R. We recognized stock compensation expense associated with restricted stock units and shares of restricted stock of \$3,260 and \$9,795 for the three months ended June 30, 2006 and 2005, respectively, and \$10,177 and \$19,096 for the six months ended June 30, 2006 and 2005, respectively.

For the three and six months ended June 30, 2006, we also recognized stock compensation expense of \$21,764 and \$43,345, respectively, for restricted stock units and common stock expected to be granted for services performed in 2006 or upon the satisfaction of 2006 performance targets. For the three and six months ended June 30, 2005, we recognized stock compensation expense of \$773 and \$1,611, respectively, for restricted stock units granted in 2006 for services performed in 2005.

# 401(k) Savings Plan

We sponsor the Sirius Satellite Radio 401(k) Savings Plan (the "Plan") for eligible employees. The Plan allows eligible employees to voluntarily contribute from 1% to 50% of their pre-tax salary subject to certain defined limits. Currently we match 50% of employee voluntary contributions, up to 6% of an employee's pre-tax salary, in

the form of shares of our common stock. Our matching contribution vests at a rate of 33<sub>3</sub>% for each year of employment and is fully vested after three years of employment. Expense resulting from our matching contribution to the Plan was \$338 and \$249 for the three months ended June 30, 2006 and 2005, respectively, and \$750 and \$548 for the six months ended June 30, 2006 and 2005, respectively.

We may also elect to contribute to the profit sharing portion of the Plan based upon the total compensation of all participants eligible to receive an allocation. These additional contributions, referred to as profit-sharing contributions, are determined by the compensation committee of our board of directors. Employees are only eligible to receive profit-sharing contributions during any year in which they are employed on the last day of the year. Profit-sharing contribution expense was \$953 and \$1,088 for the three months ended June 30, 2006 and 2005, respectively, and \$2,259 and \$2,089 for the six months ended June 30, 2006 and 2005, respectively.

#### 9. Income Taxes

We recorded income tax expense of \$578 and \$560 for the three months ended June 30, 2006 and 2005, respectively, and \$1,331 and \$1,120 for the six months ended June 30, 2006 and 2005, 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.

#### 10. Commitments and Contingencies

The following table summarizes our expected contractual cash commitments as of June 30, 2006:

	Remaining 2006	2007	2008	2009	2010	Thereafter	Total
Long-term debt obligations	<u> </u>	<u> </u>	\$ 52,185	\$ 301,744	<u> </u>	\$ 730,000	\$1,083,929
Cash interest payments	32,789	65,578	64,665	59,856	55,600	152,878	431,366
Lease obligations	4,451	9,135	8,925	8,881	8,665	32,250	72,307
Satellite and transmission	46,565	24,975	81,475	39,758	2,137	8,337	203,247
Programming and content	70,927	118,055	122,647	146,019	148,560	66,167	672,375
Customer service and billing	750	3,138	_	_	_	_	3,888
Marketing and distribution	56,572	39,733	27,526	19,050	20,425	12,568	175,874
Chip set development and production	5,659	3,467	_	_	_	_	9,126
Other	4,270	415	168	11	_	_	4,864
Total contractual cash commitments	\$221,983	\$264,496	\$357,591	\$575,319	\$235,387	\$1,002,200	\$2,656,976

Long-Term Debt Obligations. Long-term debt obligations include principal payments on our outstanding debt.

Cash Interest Payments. Cash interest payments include interest due on our outstanding debt through maturity.

Lease Obligations. We have entered into operating leases related to our studios, office space, terrestrial repeaters and equipment.

Satellite and Transmission. We have entered into agreements with third parties to operate and maintain our off-site satellite telemetry, tracking and control facilities and certain components of our terrestrial repeater network. We have also entered into an agreement with Space Systems/Loral for the design and construction of a new satellite. Construction of this satellite is expected to be completed in the fourth quarter of 2008. We plan to launch this satellite on a Proton rocket under our contract with International Launch Services.

Programming and Content. We have entered into agreements with licensors of programming and other content providers 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 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 also 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 third parties to develop, produce and supply chip sets, and in certain instances to license intellectual property related to such chip sets.

Other. We have entered into an agreement with Canadian Broadcasting Corporation and Standard Broadcasting Corporation to fund SIRIUS Canada. We have also entered into various agreements with third parties for general operating purposes. Amounts associated with SIRIUS Canada and these various other agreements are included in the commitments table.

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

Under the terms of a joint development agreement with XM 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 engineering, design and development expense in the accompanying unaudited consolidated statements of operations. We are currently unable to determine the expenditures necessary to complete this process, but we do not expect that these expenditures will be material.

We are required under the terms of certain agreements to provide letters of credit and deposit monies in escrow, which place restrictions on our cash and cash equivalents. As of June 30, 2006 and December 31, 2005, \$108,315 and \$107,615, respectively, were classified as restricted investments as a result of our reimbursement obligations under these letters of credit and escrow deposits.

As of June 30, 2006, we have not entered into any off-balance sheet arrangements or transactions.

#### Legal Proceedings

In April 2006, we learned that two manufacturers of SIRIUS radios and our principal competitor had received inquiries from the Federal Communications Commission as to whether the FM transmitters in their products complied with the FCC's emissions and frequency rules. We promptly began an internal review of the compliance of the FM transmitters in a number of our radios. On June 20, we received a letter directly from the FCC making similar inquiries. On July 12, we responded to the letter from the FCC in respect of the preliminary results of our review. On August 7, we received a follow-up letter of inquiry from the FCC.

During our internal review, we determined that certain of our radios with FM transmitters were not compliant with FCC rules. We have taken a series of actions to evaluate, mitigate and correct the problem. We directed manufacturers of SIRIUS radios with FM transmitters to suspend manufacture and shipment to retailers of non-compliant devices and to make the necessary changes in production to bring the radios into compliance.

In connection with our internal review, we discovered that certain SIRIUS personnel requested manufacturers to produce SIRIUS radios that were not consistent with the FCC's rules. As a result of this review, we are taking significant steps to ensure that this situation does not happen again, including the adoption of a comprehensive compliance plan, approved by our board of directors, to ensure that in the future our products comply with all applicable FCC rules.

The FCC is continuing its review of our products as well as products of other companies containing FM transmitters. The FCC's laboratory has tested a number of our products and found them to be compliant with the FCC's rules. Based upon this testing, the FCC has permitted a grant of authority for the Starmate Replay to remain effective, and we expect the FCC to permit new equipment authorizations for other products shortly, including the Sportster Replay, Sirius One and U.S. Electronic's Visor. We believe our radios that are currently in production

comply with applicable FCC rules. SIRIUS radios that include compliant FM transmitters may be subject to some transmission noise, which may result in us encouraging professional installation in some cases. We continue to study methods to improve the customer experience for our subscribers using SIRIUS radios that rely on FM transmissions.

We continue to cooperate with the FCC's on-going inquiry. As part of this cooperation, we are discussing with the FCC the proper testing methodology for SIRIUS radios that include FM transmitters and methods to bring devices in retail inventory or in consumers' hands into compliance with the FCC's rules.

No health or safety issues are involved with these SIRIUS radios and radios which are factory-installed in new vehicles are not affected.

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

#### Item 2.

#### 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," "intend," "plan," "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, 2005 (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 Item 1A of the Form 10-K and in Part II, Item 1A of this Quarterly Report on Form 10-Q.

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

- · the useful life of our satellites, which have experienced circuit failures on their solar arrays and other component failures and are not insured;
- · our dependence upon third parties, including manufacturers of SIRIUS radios, retailers, automakers and programming partners; and
- our competitive position versus XM Radio, the other satellite radio service provider in the United States, which may have certain competitive advantages, and versus other forms of audio and video entertainment.

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**

#### O------

We are a satellite radio provider in the United States. We currently broadcast 133 channels of programming to listeners across the country. We offer 69 channels of 100% commercial-free music and feature 64 channels of sports, news, talk, entertainment, traffic and weather for a monthly subscription fee of \$12.95.

We broadcast through our proprietary satellite radio system, which currently consists of three orbiting satellites, 139 terrestrial repeaters that receive and retransmit our signal, a satellite uplink facility and our studios. Subscribers receive our service through SIRIUS radios, which are sold by automakers, consumer electronics retailers and mobile audio dealers and through our website. Subscribers can also receive our music channels and certain other channels over the Internet.

Our music channels are also available to DISH satellite television subscribers and certain of our music channels are offered to Sprint subscribers over multi-media handsets. We also offer traffic and weather data services for a separate fee. Subscribers to DISH satellite television, Sprint and our traffic and weather data services are not included in our subscriber count.

In 2005, SIRIUS Canada Inc., a Canadian corporation owned by us, Canadian Broadcasting Corporation and Standard Broadcasting Corporation, received a license from the Canadian Radio-television and Telecommunications Commission to offer a satellite radio service in Canada. In December 2005, SIRIUS Canada launched service in Canada with 100 channels of commercial-free music and news, sports, talk and entertainment programming, including 10 channels of Canadian content. Subscribers to the SIRIUS Canada service are not included in our subscriber count.

SIRIUS radios are primarily distributed through retailers; automakers, or OEMs; and through our website. SIRIUS radios can be purchased at major retailers, including Best Buy; Circuit City; Crutchfield; Costco; Target; Wal-Mart; and through RadioShack on an exclusive basis. On June 30, 2006, SIRIUS radios were available at over 25,000 retail locations. We have exclusive agreements with DaimlerChrysler, Ford, Kia, Mitsubishi, BMW, Rolls-Royce, Volkswagen and Audi to offer SIRIUS radios as factory or dealer-installed equipment. We also have relationships with Nissan, Infiniti, Toyota, Lexus, Scion and Subaru to offer SIRIUS radios as factory or dealer-installed equipment. As of June 30, 2006, SIRIUS radios were available as a factory-installed option in 104 vehicle models and as a dealer-installed option in 21 vehicle models. SIRIUS radios are also offered to renters of Hertz vehicles at airport locations nationwide.

As of June 30, 2006, we had 4,678,207 subscribers compared with 3,316,560 subscribers as of December 31, 2005 and 1,814,626 subscribers as of June 30, 2005. Our subscriber totals include subscribers under our regular pricing plans; subscribers that have prepaid, including payments received from automakers for prepaid subscriptions included in the sale or lease price of a new vehicle; and active SIRIUS radios under our agreement with Hertz.

We expect an increasing proportion of our subscribers will be generated through our relationships with automakers. We believe our ability to attract and retain subscribers depends in large part on creating and sustaining distribution channels for SIRIUS radios and on the quality and entertainment value of our programming. We expect to concentrate our future efforts on enhancing and refining our programming, whether through additional agreements with third parties or our own creative efforts; introducing SIRIUS radios with new features and functions; and expanding the distribution of SIRIUS radios through arrangements with automakers and through additional retail points-of-sale.

Our primary source of revenue is subscription fees, with most of our customers subscribing to SIRIUS on either an annual or a monthly basis. We offer discounts for pre-paid and long-term subscriptions as well as discounts for multiple subscriptions. Currently we receive an average of approximately eight months of prepaid revenue per subscriber upon activation. We also derive revenue from activation fees, the sale of advertising on our non-music channels and the direct sale of SIRIUS radios and accessories.

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

Costs associated with acquiring subscribers are generally incurred and expensed in advance of acquiring a subscriber and are recognized as subscriber acquisition costs, or SAC. A large percentage of our annual gross subscriber additions are acquired in the fourth quarter in connection with holiday sales. As a result, our SAC, as adjusted, per gross subscriber addition, a key operating metric for our business, is generally higher in the first three quarters of our fiscal year and declines in the fourth quarter as we experience higher activation rates.

During the first half of 2006, we achieved significant financial and operational milestones, including:

- · leading the satellite radio industry in net subscriber additions, capturing approximately 60% share of industry net additions in the second quarter;
- · new exclusive agreements with Volkswagen, Audi, Kia and Rolls-Royce;
- significant reduction in SAC, as adjusted, per gross subscriber addition versus the three and six months ended June 30, 2005;
- strong advertising revenue of \$15,463 for the six months ended June 30, 2006, representing 50% of total satellite radio industry advertising revenue for the year; and
- new programming additions, including Howard Stern, Playboy Radio, Cosmo Radio, Blue Collar Comedy Radio, FOX News Channels, the Catholic Channel, Barbara Walters, Mark Cuban, Jerry Rice and Tony Stewart.

In June 2006, we entered into an agreement with Space Systems/Loral for the design and construction of a new satellite that will be one of the most advanced and powerful communications satellites ever built. Construction of the satellite is expected to be completed in the fourth quarter of 2008. The satellite will be launched on a Proton rocket acquired by us under a previously announced launch contract. The aggregate cost of designing, building and launching the satellite and insuring its launch will be approximately \$260,000.

#### **Results of Operations**

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

#### Subscribers and Key Operating Metrics:

The following table contains a breakdown of our subscribers for the past five quarters:

		As of								
	June 30, 2006	March 31, 2006	December 31, 2005	September 30, 2005	June 30, 2005					
Beginning subscribers	4,077,747	3,316,560	2,173,920	1,814,626	1,448,695					
Net additions	600,460	761,187	1,142,640	359,294	365,931					
Ending subscribers	4,678,207	4,077,747	3,316,560	2,173,920	1,814,626					
Retail	3,276,615	3,000,321	2,465,363	1,564,718	1,354,798					
OEM	1,373,610	1,049,036	823,693	581,988	432,988					
Hertz	27,982	28,390	27,504	27,214	26,840					

Subscribers. During the three months ended June 30, 2006, we added 600,460 net subscribers, a 64% increase over second quarter 2005 net subscriber additions of 365,931. Of our net subscriber additions for the three months ended June 30, 2006, we added 276,294 net subscribers from our retail channel, a 13% increase over 244,985 retail net additions for the three months ended June 30, 2005, and 324,574 net subscribers from our OEM channel, 167% more than second quarter 2005 OEM net subscriber additions of 121,664. Strong contributions by our exclusive OEMs, DaimlerChrysler and Ford, fueled this growth during the quarter.

The following table presents our key operating metrics for the past five quarters:

	For the Three Months Ended									
		June 30, 2006		March 31, 2006		December 31, 2005		September 30, 2005		June 30, 2005
Gross subscriber additions		830,571		960,610		1,266,674		465,228		432,687
Deactivated subscribers		230,111		199,423		124,034		105,934		66,756
Average monthly churn (1)(5)		1.8%		1.8%		1.5%		1.8%		1.4%
Average monthly subscriber revenue per subscriber before effects of Hertz subscribers and mail-in rebates	\$	10.64	\$	10.70	\$	10.76	\$	11.08	\$	10.60
Effects of Hertz subscribers		0.05		0.03		0.03		0.06		0.05
Effects of mail-in rebates		(0.15)		(0.58)		(1.77)		(0.25)		(0.37)
Average monthly subscriber revenue per subscriber		10.54		10.15		9.02		10.89		10.28
Average monthly net advertising revenue per subscriber		0.62	_	0.65		0.40		0.26		0.22
ARPU (2)(5)	\$	11.16	\$	10.80	\$	9.42	\$	11.15	\$	10.50
SAC, as adjusted, per gross subscriber addition <sup>(3)(5)</sup>	\$	131	\$	113	\$	113	\$	149	\$	160
Customer service and billing expenses, as adjusted, per average subscriber <sup>(4)</sup> (5)	\$	1.05	\$	1.40	\$	2.66	\$	1.59	\$	1.60
Adjusted loss from operations (6)	s	(126,528)	\$	(136,650)	\$	(226,269)	\$	(105,414)	\$	(108,772)
Net loss	\$	(237,828)	\$	(458,544)	\$	(311,389)	\$	(180,450)	\$	(177,546)
		19								

ARPU. Total ARPU for the three months ended June 30, 2006 was \$11.16, up from \$10.50 for the three months ended June 30, 2005, driven by higher net advertising revenue, the impact of mail-in rebates and the timing of the commencement of revenue recognition for prepaid subscriptions, offset by the impact of plan mix. At June 30, 2006, approximately two-thirds of our subscribers were on a one-year or longer subscription plan and approximately 13% were paying \$6.99 per month under a multi-unit subscriber plan.

SAC, As Adjusted, Per Gross Subscriber Addition. SAC, as adjusted, per gross subscriber addition was \$131 and \$160 for the three months ended June 30, 2006 and 2005, respectively. The decline was primarily attributable to the reduction in average subsidy rates as we continued to reduce manufacturing and chip set costs.

We expect SAC, as adjusted, per gross subscriber addition to decline as the costs of subsidized components of SIRIUS radios will continue to decrease in the future. If competitive forces require us to increase hardware subsidies or promotions, SAC, as adjusted, per gross subscriber addition could increase. Our SAC, as adjusted, per gross subscriber addition is generally higher in the first three quarters of our fiscal year and declines in the fourth quarter as we experience higher activation rates.

Customer Service and Billing Expenses, As Adjusted, Per Average Subscriber Per Month. Customer service and billing expenses, as adjusted, per average subscriber per month declined 34% to \$1.05 for the second quarter of 2006 compared with \$1.60 for the second quarter of 2005. We expect our customer care and billing expenses to increase and our costs per subscriber to decrease on an annual basis as our subscriber base grows

Adjusted Loss from Operations. For the three months ended June 30, 2006 and 2005, adjusted loss from operations was \$126,528 and \$108,772, respectively, an increase of \$17,756. The increase was primarily driven by subscriber acquisition costs excluding equity granted to third parties and employees expense reflecting higher shipments of SIRIUS radios and chip sets and increased commissions to support an increase in gross subscriber additions and an increase in programming and content expenses excluding equity granted to third parties and employees expense primarily attributable to consulting and license fees associated with new programming. The increase in these expenses was more than offset by an increase in subscriber revenue as a result of a 158% increase in our subscriber base year over year.

Net Loss. For the three months ended June 30, 2006 and 2005, net loss was \$237,828 and \$177,546, respectively, an increase of \$60,282. The increase was primarily driven by an increase in subscriber acquisition costs reflecting higher shipments of SIRIUS radios and chip sets and increased commissions to support an increase in gross subscriber additions and an increase in programming and content expenses primarily attributable to consulting and license fees associated with new programming and equity granted to third parties and employees expense due to amounts associated with common stock expected to be earned upon the satisfaction of performance targets. The increase in subscriber acquisition costs and programming and content expenses was offset by an increase in subscriber revenue as a result of a 158% increase in our subscriber base year over year.

#### Three and Six Months Ended June 30, 2006 Compared with Three and Six Months Ended June 30, 2005

#### Total Revenue

Subscriber Revenue. Subscriber revenue includes subscription fees, activation fees and the effects of mail-in rebates.

- Three Months: For the three months ended June 30, 2006 and 2005, subscriber revenue was \$137,636 and \$49,622, respectively, an increase of 177% or \$88,014. The increase was attributable to the growth of subscribers to our service.
- Six Months: For the six months ended June 30, 2006 and 2005, subscriber revenue was \$252,817 and \$91,526, respectively, an increase of 176% or \$161,291. The increase was attributable to the growth of subscribers to our service.

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

	For the Three Months Ended June 30,					For the Six Months Ended June 30,			
	 2006		2005		2006		2005		
Subscription fees	\$ 136,020	\$	50,057	\$	254,011	\$	90,655		
Activation fees	3,647		1,346		7,371		2,884		
Effects of mail-in rebates	(2,031)		(1,781)		(8,565)		(2,013)		
	 			_		_			
Total subscriber revenue	\$ 137,636	\$	49,622	\$	252,817	\$	91,526		

Future subscriber revenue will be dependent upon, among other things, the growth of our subscriber base, promotions, mail-in rebates offered to subscribers and corresponding take-rates, plan mix, subscription prices and the identification of additional revenue streams from subscribers.

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

- Three Months: For the three months ended June 30, 2006 and 2005, advertising revenue was \$8,125 and \$1,052, respectively, an increase of \$7,073. More attractive programming and increased advertiser interest resulted in an increase in spots sold.
- Six Months: For the six months ended June 30, 2006 and 2005, advertising revenue was \$15,463 and \$1,586, respectively, an increase of \$13,877. More attractive programming and increased advertiser interest resulted in an increase in spots sold.

We expect advertising revenue to grow as our subscribers increase and we continue to improve brand awareness and content

Equipment Revenue. Equipment revenue includes revenue from the direct sale of SIRIUS radios and accessories through our direct to consumer distribution channel.

- Three Months: For the three months ended June 30, 2006 and 2005, equipment revenue was \$3,096 and \$1,503, respectively, an increase of \$1,593. The increase was the result of increased sales through our direct to consumer distribution channel.
- Six Months: For the six months ended June 30, 2006 and 2005, equipment revenue was \$6,788 and \$2,270, respectively, an increase of \$4,518. The increase was the result of increased sales through our direct to consumer distribution channel.

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

#### **Operating Expenses**

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

- Three Months: For the three months ended June 30, 2006 and 2005, satellite and transmission expenses were \$18,496 and \$7,097, respectively, an increase of \$11,399. Excluding equity granted to third parties and employees expense of \$810 and \$429 for the three months ended June 30, 2006 and 2005, respectively, satellite and transmission expenses increased \$11,018 from \$6,668 to \$17,686. This increase of \$11,018 was primarily attributable to an impairment charge associated with certain satellite long-lead time parts we purchased in 1999 that we will no longer need as a result of our new satellite contract. As of June 30, 2006 and 2005, we had 139 and 140 terrestrial repeaters, respectively, in operation.
- Six Months: For the six months ended June 30, 2006 and 2005, satellite and transmission expenses were \$26,699 and \$14,469, respectively, an increase of \$12,230. Excluding equity granted to third parties and employees expense of \$1,712 and \$988 for the six months ended June 30, 2006 and 2005, respectively, satellite and transmission expenses increased \$11,506 from \$13,481 to \$24,987. This

increase of \$11,506 was primarily attributable to an impairment charge associated with certain satellite long-lead time parts we purchased in 1999 that we will no longer need as a result of our new satellite contract.

Future increases in satellite and transmission expenses will primarily be attributable to the launch of new satellites, the addition of new terrestrial repeaters and maintenance costs of existing terrestrial repeaters. We expect to deploy additional terrestrial repeaters later this year. Such expenses may also increase in future periods if we decide to reinstate our in-orbit satellite insurance.

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

- Three Months: For the three months ended June 30, 2006 and 2005, programming and content expenses were \$76,735 and \$20,819, respectively, an increase of \$55,916. Excluding equity granted to third parties and employees expense of \$23,724 and \$5,050 for the three months ended June 30, 2006 and 2005, respectively, programming and content expenses increased \$37,242 from \$15,769 to \$53,011. This increase of \$37,242 was primarily attributable to consulting and license fees associated with new programming, broadcast and webstreaming royalties as a result of the increase in subscribers and compensation related costs for additions to headcount. Equity granted to third parties and employees expense increased \$18,674 primarily due to expense associated with common stock expected to be earned upon the satisfaction of performance targets.
- Six Months: For the six months ended June 30, 2006 and 2005, programming and content expenses were \$382,979 and \$49,985, respectively, an increase of \$332,994. Excluding equity granted to third parties and employees expense of \$273,524 and \$9,938 for the six months ended June 30, 2006 and 2005, respectively, programming and content expenses increased \$69,408 from \$40,047 to \$109,455. This increase of \$69,408 was primarily attributable to consulting and license fees associated with new programming, broadcast and webstreaming royalties as a result of the increase in subscribers and compensation related costs for additions to headcount. Equity granted to third parties and employees expense increased \$263,586 primarily due to \$224,813 associated with 34,375,000 shares of our common stock granted to Howard Stern and his agent in January 2006 and expense associated with common stock expected to be earned upon the satisfaction of performance targets.

Our programming and content expenses, excluding equity granted to third parties and employees expense, will increase as we continue to develop and enhance our channels. Beginning February 2007, our agreement with NASCAR will increase our programming and content expenses. In addition, we expect broadcast and webstreaming royalties to increase as our subscriber base grows. We regularly evaluate programming opportunities and may choose to acquire and develop new content or renew current programming agreements in the future at substantial costs.

Future expense associated with equity granted to third parties and employees is contingent upon a number of factors, including the number of stock-based awards granted, the price of our common stock, assumptions used in estimating the fair value of stock-based awards, estimates for forfeitures, vesting provisions and the timing as to when certain performance criteria are met, and could materially change.

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

• Three Months: For the three months ended June 30, 2006 and 2005, customer service and billing expenses were \$13,863 and \$7,864, respectively, an increase of \$5,999. Excluding equity granted to third parties and employees expense of \$204 and \$126 for the three months ended June 30, 2006 and 2005, respectively, customer service and billing expenses increased \$5,921 from \$7,738 to \$13,659. This increase of \$5,921 was primarily due to increased customer service representative costs as a result of the expansion and growth of our call centers to accommodate our subscriber base and increased transaction fees due to the addition of new subscribers. Customer service and billing expenses,

- excluding equity granted to third parties and employees expense, increased 77% compared with an increase in our end of period subscribers of 158% year over year.
- Six Months: For the six months ended June 30, 2006 and 2005, customer service and billing expenses were \$29,948 and \$17,495, respectively, an increase of \$12,453. Excluding equity granted to third parties and employees expense of \$448 and \$265 for the six months ended June 30, 2006 and 2005, respectively, customer service and billing expenses increased \$12,270 from \$17,230 to \$29,500. This increase of \$12,270 was primarily due to increased customer service representative costs and telecommunication charges as a result of the expansion and growth of our call centers to accommodate our subscriber base and increased transaction fees due to the addition of new subscribers. Customer service and billing expenses, excluding equity granted to third parties and employees expense, increased 71% compared with an increase in our end of period subscribers of 158% year over year.

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

Cost of Equipment. Cost of equipment includes costs for SIRIUS radios and accessories sold through our direct to consumer distribution channel.

- Three Months: For the three months ended June 30, 2006 and 2005, cost of equipment was \$3,467 and \$1,952, respectively, an increase of \$1,515. The increase was primarily attributable to higher sales through our direct to consumer distribution channel.
- Six Months: For the six months ended June 30, 2006 and 2005, cost of equipment was \$6,932 and \$2,928, respectively, an increase of \$4,004. The increase was primarily attributable to higher sales through our direct to consumer distribution channel.

We expect cost of equipment to increase in the future as we introduce new products and as sales through our direct to consumer distribution channel grow.

Sales and Marketing. Sales and marketing expenses include costs for advertising, media and production, including promotional events and sponsorships; residuals; cooperative marketing; revenue share; customer retention and compensation. Residuals are monthly fees paid based upon the number of subscribers using a SIRIUS radio purchased from a retailer. Cooperative marketing includes fixed and variable payments to reimburse retailers and automakers for the cost of advertising and other product awareness activities.

- Three Months: For the three months ended June 30, 2006 and 2005, sales and marketing expenses were \$61,676 and \$41,516, respectively, an increase of \$20,160. Excluding equity granted to third parties and employees expense of \$5,067 and \$7,276 for the three months ended June 30, 2006 and 2005, respectively, sales and marketing expenses increased \$22,369 from \$34,240 to \$56,609. This increase of \$22,369 was primarily due to less spending in second quarter 2005 in anticipation of the fourth quarter 2005 marketing campaign associated with the launch of Howard Stern; advertising costs for the new marketing campaign "Best Radio on Radio;" cooperative marketing with our distribution partners; and increased residuals and OEM revenue share as a result of a 158% increase in our subscriber base year over year. This 65% increase in sales and marketing expenses, excluding equity granted to third parties and employees expense, compared with a 92% increase in gross subscriber additions from 432,687 for the three months ended June 30, 2006. Equity granted to third parties and employees expense decreased \$2,209 primarily due to the timing of third parties achieving milestones and changes in the fair market value of such awards.
- Six Months: For the six months ended June 30, 2006 and 2005, sales and marketing expenses were \$103,174 and \$90,068, respectively, an increase of \$13,106. Excluding equity granted to third parties and employees expense of \$7,269 and \$20,706 for the six months ended June 30, 2006 and 2005, respectively, sales and marketing expenses increased \$26,543 from \$69,362 to \$95,905. This increase of \$26,543 was primarily due to increased residuals and OEM revenue share as a result of the increase in our subscriber base, as well as increased cooperative marketing with our distribution partners, advertising costs for the new marketing campaign "Best Radio on Radio" and compensation related

costs. This 38% increase in sales and marketing expenses, excluding equity granted to third parties and employees expense, compared with a 127% increase in gross subscriber additions from 787,395 for the six months ended June 30, 2005 to 1,791,181 for the six months ended June 30, 2006. Equity granted to third parties and employees expense decreased \$13,437 primarily due to the timing of third parties achieving milestones and changes in the fair market value of such awards.

We expect sales and marketing expenses, excluding equity granted to third parties and employees expense, to increase as we continue to build brand awareness through national advertising and promotional activities and expand the distribution of SIRIUS radios. Beginning in 2007, our agreement with NASCAR will increase our sponsorship costs included in sales and marketing expense.

Future expense associated with equity granted to third parties and employees is contingent upon a number of factors, including the number of stock-based awards granted, the price of our common stock, assumptions used in estimating the fair value of stock-based awards, estimates for forfeitures, vesting provisions and the timing as to when certain performance criteria are met, and could materially change.

Subscriber Acquisition Costs. Subscriber acquisition costs include hardware subsidies paid to radio manufacturers, distributors and automakers, including subsidies paid to automakers who include a SIRIUS radio and a prepaid subscription to our service in the sale or lease price of a new vehicle; subsidies paid to chip set manufacturers; commissions paid to retailers and automakers as incentives to purchase, install and activate SIRIUS radios; and equity-based compensation expense related to distribution partners' achievement of various milestones. The majority of subscriber acquisition costs are incurred and expensed in advance of acquiring a subscriber acquisition costs do not include advertising, loyalty payments to distributors and dealers of SIRIUS radios, which are included in sales and marketing expense. Subscriber acquisition costs also do not include amounts capitalized in connection with our agreement with Hertz, as we retain ownership of certain SIRIUS radios used by Hertz.

- Three Months: For the three months ended June 30, 2006 and 2005, subscriber acquisition costs were \$130,563 and \$81,226, respectively, an increase of 61% or \$49,337. Excluding equity granted to third parties and employees expense of \$21,900 and \$12,533 for the three months ended June 30, 2006 and 2005, respectively, subscriber acquisition costs increased 58%, or \$39,970, from \$68,693 to \$108,663. This increase of \$39,970 was attributable to subsidies for higher shipments of SIRIUS radios and chip sets to accommodate the growth of our subscriber base and increases in commissions resulting from the increase in gross subscriber additions, offset by reductions in average subsidy rates as we continued to reduce manufacturing and chip set costs. Over the same period, gross subscriber additions increased 92% from 432,687 for the three months ended June 30, 2005 to 830,571 for the three months ended June 30, 2006. Equity granted to third parties and employees expense increased \$9,367 primarily due to the timing of third parties achieving milestones and changes in the fair market value of such awards.
- Six Months: For the six months ended June 30, 2006 and 2005, subscriber acquisition costs were \$249,606 and \$154,547, respectively, an increase of 62% or \$95,059. Excluding equity granted to third parties and employees expense of \$31,799 and \$18,761 for the six months ended June 30, 2006 and 2005, respectively, subscriber acquisition costs increased 60%, or \$82,021, from \$135,786 to \$217,807. This increase of \$82,021 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 increases in commissions resulting from the increase in gross subscriber additions, offset by reductions in average subsidy rates as we continued to reduce manufacturing and chip set costs. Over the same period, gross subscriber additions increased 127% from 787,395 for the six months ended June 30, 2005 to 1,791,181 for the six months ended June 30, 2006. Equity granted to third parties and employees expense increased \$13,038 primarily due to the timing of third parties achieving milestones and changes in the fair market value of such awards.

We expect total subscriber acquisition costs, excluding equity granted to third parties and employees expense, to increase in the future as our gross subscriber additions increase and we continue to offer subsidies, commissions and other incentives to acquire subscribers.

Future expense associated with equity granted to third parties and employees is contingent upon a number of factors, including the number of stock-based awards granted, the price of our common stock, assumptions used in estimating the fair value of stock-based awards, estimates for forfeitures, vesting provisions and the timing as to when certain performance criteria are met, and could materially change.

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

- Three Months: For the three months ended June 30, 2006 and 2005, general and administrative expenses were \$34,558 and \$22,452, respectively, an increase of \$12,106. Excluding equity granted to third parties and employees expense of \$12,905 and \$8,332 for the three months ended June 30, 2006 and 2005, respectively, general and administrative expenses increased \$7,533 from \$14,120 to \$21,653. This increase of \$7,533 was primarily a result of legal fees, employment-related costs and bad debt expense to support the growth of our business. Equity granted to third parties and employees expense increased \$4,573 primarily as a result of the adoption of Statement of Financial Account Statement ("SFAS") No. 123 (revised 2004), "Share-Based Payment" ("SFAS No. 123R"), offset by a decrease in expense for restricted stock units that vested in the first quarter of 2006.
- Six Months: For the six months ended June 30, 2006 and 2005, general and administrative expenses were \$68,208 and \$44,561, respectively, an increase of \$23,647. Excluding equity granted to third parties and employees expense of \$27,411 and \$15,609 for the six months ended June 30, 2006 and 2005, respectively, general and administrative expenses increased \$11,845 from \$28,952 to \$40,797. This increase of \$11,845 was primarily a result of legal fees, employment-related costs and bad debt expense to support the growth of our business. Equity granted to third parties and employees expense increased \$11,802 primarily as a result of the adoption of SFAS No. 123R, offset by a decrease in expense for restricted stock units that vested in the first quarter of 2006.

We expect our general and administrative expenses, excluding equity granted to third parties and employees expense, to increase in future periods for personnel-related and facility costs to support our growth.

Future expense associated with equity granted to third parties and employees is contingent upon a number of factors, including the number of stock-based awards granted, the price of our common stock, assumptions used in estimating the fair value of stock-based awards, estimates for forfeitures, vesting provisions and the timing as to when certain performance criteria are met, and could materially change.

Engineering, Design and Development. Engineering, design and development expenses include 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.

- Three Months: For the three months ended June 30, 2006 and 2005, engineering, design and development expenses were \$15,454 and \$19,270, respectively, a decrease of \$3,816. Excluding equity granted to third parties and employees expense of \$2,679 and \$7,484 for the three months ended June 30, 2006 and 2005, respectively, engineering, design and development expenses increased \$989 from \$11,786 to \$12,775. This increase of \$989 was primarily attributable to additional personnel-related costs to support research and development efforts; costs associated with OEM tooling and manufacturing upgrades for factory installations of SIRIUS radios; and development costs associated with the manufacturing of our radios; offset by a decrease in chip set development costs. Equity granted to third parties and employees expense decreased \$4,805 primarily due to the timing of third parties achieving certain production milestones and changes in the fair market value of such awards.
- Six Months: For the six months ended June 30, 2006 and 2005, engineering, design and development expenses were \$35,166 and \$37,117, respectively, a decrease of \$1,951. Excluding equity granted to third parties and employees expense of \$9,712 and \$13,669 for the six months ended June 30, 2006 and 2005, respectively, engineering, design and development expenses increased \$2,006 from \$23,448 to \$25,454. This increase of \$2,006 was primarily attributable to additional personnel-related costs to support research and development efforts; costs associated with OEM tooling and manufacturing upgrades for factory installations of SIRIUS radios; development costs associated with the manufacturing of our radios;

and costs incurred for the development of advanced products and services; offset by a decrease in chip set development costs. Equity granted to third parties and employees expense decreased \$3,957 primarily due to the timing of third parties achieving certain production milestones and changes in the fair market value of such awards.

We expect engineering, design and development expenses, excluding equity granted to third parties and employees expense, to decrease in 2007, as we anticipate incorporating SIRIUS radios and accessories in a significant number of vehicle models in 2006.

Future expense associated with equity granted to third parties and employees is contingent upon a number of factors, including the number of stock-based awards granted, the price of our common stock, assumptions used in estimating the fair value of stock-based awards, estimates for forfeitures, vesting provisions and the timing as to when certain performance criteria are met, and could materially change.

#### Other Income (Expense)

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

- Three Months: For the three months ended June 30, 2006 and 2005, interest and investment income was \$8,873 and \$4,790, respectively, an increase of \$4,083. The increase was attributable to a combination of higher overall interest rates and our decision to invest in financial instruments bearing higher interest rates.
- Six Months: For the six months ended June 30, 2006 and 2005, interest and investment income was \$18,810 and \$9,277, respectively, an increase of \$9,533. The increase was attributable to a combination of higher overall interest rates and our decision to invest in financial instruments bearing higher interest rates.

Interest Expense. Interest expense includes interest on outstanding debt.

- Three Months: For the three months ended June 30, 2006 and 2005, interest expense was \$15,660 and \$7,201, respectively, an increase of \$8,459. The increase was primarily the result of interest expense for our 95/8% Senior Notes due 2013 issued in August 2005, offset by a decrease in interest expense as a result of the redemption of our 15% Senior Secured Discount Notes due 2007 and our 141/2% Senior Secured Notes due 2009 in September 2005 and the effect of interest capitalized in 2006 in connection with our new satellite.
- Six Months: For the six months ended June 30, 2006 and 2005, interest expense was \$32,784 and \$14,526, respectively, an increase of \$18,258. The increase was primarily the result of interest expense for our 95/8% Senior Notes due 2013 issued in August 2005, offset by a decrease in interest expense as a result of the redemption of our 15% Senior Secured Discount Notes due 2007 and our 14½% Senior Secured Notes due 2009 in September 2005 and the effect of interest capitalized in 2006 in connection with our new satellite.

We expect interest expense to decrease in the future as we capitalize interest in connection with the construction and launch of our new satellite.

Equity in Net Loss of Affiliate. Equity in net loss of affiliate includes our share of SIRIUS Canada's net loss.

Six Months: We recorded \$4,445 for our share of SIRIUS Canada's net loss. No expense was recorded for any other periods presented.

#### Income Taxes

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

Three Months: We recorded income tax expense of \$578 and \$560 for the three months ended June 30, 2006 and 2005, respectively.

Six Months: We recorded income tax expense of \$1,331 and \$1,120 for the six months ended June 30, 2006 and 2005, respectively.

#### Footnotes to Results of Operations

- (1) Average monthly churn represents the number of deactivated subscribers divided by average quarterly subscribers.
- (2) ARPU is derived from total earned subscriber revenue and net advertising revenue divided by the daily weighted average number of subscribers for the period. ARPU is calculated as follows:

	For the Three Months Ended									
		June 30, 2006		March 31, 2006	I	December 31, 2005	s	eptember 30, 2005		June 30, 2005
Subscriber revenue	\$	137,636	\$	115,181	\$	67,816	\$	64,273	\$	49,622
Net advertising revenue		8,125		7,338		3,037		1,508		1,052
			_		_				_	
Total subscriber and net advertising revenue	\$	145,761	\$	122,519	\$	70,853	\$	65,781	\$	50,674
Daily weighted average number of subscribers		4,354,447		3,782,543		2,505,580		1,968,643		1,609,521
ARPU	\$	11.16	\$	10.80	\$	9.42	\$	11.15	\$	10.50

(3) SAC, as adjusted, per gross subscriber addition is derived from subscriber acquisition costs, excluding equity granted to third parties and employees, and margins from the direct sale of SIRIUS radios and accessories divided by the number of gross subscriber additions for the period. SAC, as adjusted, per gross subscriber addition is calculated as follows:

	For the Three Months Ended								
	June 30, 2006		March 31, 2006	D	ecember 31, 2005	s	September 30, 2005		June 30, 2005
Subscriber acquisition costs	\$ 130,563	\$	119,043	\$	163,774	\$	81,029	\$	81,226
Less: equity granted to third parties and employees	(21,900)		(9,899)		(18,594)		(12,354)		(12,533)
Add: margin from direct sale of SIRIUS radios and accessories	371		(227)		(1,525)		423		449
	 			_				_	
SAC, as adjusted	\$ 109,034	\$	108,917	\$	143,655	\$	69,098	\$	69,142
Gross subscriber additions	830,571		960,610		1,266,674		465,228		432,687
SAC, as adjusted, per gross subscriber addition	\$ 131	\$	113	\$	113	\$	149	\$	160

- (4) Customer service and billing expenses, as adjusted, per average subscriber is derived from total customer service and billing expenses, excluding equity granted to third parties and employees, divided by the daily weighted average number of subscribers for the period.
- (5) Average monthly churn; ARPU; SAC, as adjusted, per gross subscriber addition; and customer service and billing expenses, as adjusted, per average subscriber are not measures of financial performance under U.S. generally accepted accounting principles. We believe these non-GAAP financial measures provide meaningful supplemental information regarding our operating performance and are used by us for budgetary and planning purposes; when publicly providing our business outlook; to compare our performance from period to period; and to compare our performance to that of our primary competitor. We believe that investors also use our current and projected metrics to monitor the performance of our business and make investment decisions.

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

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

(6) We refer to net loss before taxes; other income (expense)-including interest and investment income, interest expense and equity in net loss of affiliate; depreciation; impairment charges; and equity granted to third parties and employees expense as adjusted loss from operations. Adjusted loss from operations is not a measure of financial performance under generally accepted accounting principles. We believe adjusted loss from operations is a useful measure of our operating performance. We use adjusted loss from operations for budgetary and planning purposes; to assess the relative profitability and on-going performance of our consolidated operations; to compare our performance from period to period; and to compare our performance to that of our primary competitor. We also believe adjusted loss from operations is useful to investors to compare our operating performance to the performance of other communications, entertainment and media companies. We believe that investors

use current and projected adjusted loss from operations to estimate our current or prospective enterprise value and make investment decisions.

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

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

Adjusted loss from operations is calculated as follows:

	For the Three Months Ended						
		June 30, 2006	March 31, 2006	December 31, 2005	September 30, 2005	June 30, 2005	
Net loss	\$	(237,828) \$	(458,544) \$	(311,389) \$	(180,450) \$	(177,546)	
Impairment loss		10,917	· —	` <u>-</u>	` _	`	
Depreciation		25,738	24,933	24,915	24,559	24,580	
Equity granted to third parties and employees		67,289	284,586	46,196	36,946	41,230	
Other income (expense)		6,778	11,622	13,378	12,971	2,404	
Income tax expense		578	753	631	560	560	
Adjusted loss from operations	\$	(126,528) \$	(136,650) \$	(226,269) \$	(105,414) \$	(108,772)	

## **Liquidity and Capital Resources**

#### Cash Flows for the Six Months Ended June 30, 2006 Compared with the Six Months Ended June 30, 2005

As of June 30, 2006, we had \$534,963 in cash and cash equivalents compared with \$576,919 as of June 30, 2005. Cash and cash equivalents decreased \$227,044 during the six months ended June 30, 2006 from \$762,007 for the year ended December 31, 2005. The decrease was a result of net cash used in operating activities of \$270,288, offset by net cash provided by financing activities and investing activities of \$2,976 and \$40,268, respectively.

Net Cash Used in Operating Activities. The following table contains a breakdown of our net loss adjusted for non-cash items and our changes in operating assets and liabilities:

	For the Six Months Ended June 30,					
		2006		2005		Variance
Net loss adjusted for non-cash items:						
Net loss	\$	(696,372)	\$	(371,158)	\$	(325,214)
Depreciation		50,671		49,081		1,590
Non-cash interest expense		1,547		1,523		24
Provision for doubtful accounts		3,780		2,282		1,498
Non-cash equity in net loss of affiliate		2,276		_		2,276
Loss on disposal of assets		541		252		289
Impairment loss		10,917		_		10,917
Equity granted to third parties and employees		351,875		79,936		271,939
Deferred income taxes		1,331		1,120		211
	_		_		_	
Total net loss adjusted for non-cash items		(273,434)		(236,964)		(36,470)

Changes in operating assets and liabilities:			
Marketable securities	_	16	(16)
Accounts receivable	8,986	(6,056)	15,042
Inventory	(10,854)	(4,433)	(6,421)
Prepaid expenses and other current assets	(35,482)	(7,554)	(27,928)
Other long-term assets	(25,088)	478	(25,566)
Accounts payable and accrued expenses	(18,018)	26,153	(44,171)
Accrued interest	1,160	(126)	1,286
Deferred revenue	73,847	50,223	23,624
Other long-term liabilities	8,595	(3,542)	12,137
Total changes in operating assets and liabilities	3,146	55,159	(52,013)
Net cash used in operating activities	\$ (270,288)	\$ (181,805)	\$ (88,483)

Net cash used in operating activities increased \$88,483 to \$270,288 for the six months ended June 30, 2006 from \$181,805 for the six months ended June 30, 2005. Such increase was attributable to a \$52,013 decrease in the net inflow of cash from changes in operating assets and liabilities and an increase of \$36,470 in the net loss adjusted for non-cash items from \$236,964 for the six months ended June 30, 2005 to \$273,434 for the six months ended June 30, 2006.

The decrease in the net inflow of cash from changes in operating assets and liabilities was primarily attributable to a (\$44,171) change in accounts payable and accrued expenses to paydown accruals built up in the fourth quarter of 2005 and a (\$27,928) and (\$25,566) change in prepaid expenses and other current assets and other long-term assets, respectively, for programming and distribution partner activity. These changes in net outflows of cash were offset in part by a \$23,624 change in deferred revenue for subscribers electing annual and other prepaid subscription programs and a \$15,042 change in accounts receivable for the paydown of receivable balances generated for activations in the fourth quarter of 2005, which were paid in the first quarter of 2006.

The increase in the net loss adjusted for non-cash items was primarily a result of a 60%, or \$82,021, increase in subscriber acquisition costs, excluding equity granted to third parties and employees expense, reflecting subsidies for higher shipments of SIRIUS radios and chip sets and increased commissions to support a 127% increase in gross subscriber additions. In addition, other operating expenses excluding equity granted to third parties and employees expense increased primarily as a result of content associated with new programming agreements. Such increases were more than offset by a 176%, or \$161,291, increase in subscriber revenue.

Net Cash Provided by (Used in) Investing Activities. Net cash provided by investing activities was \$40,268 for the six months ended June 30, 2006 compared with net cash used in investing activities of \$1,263 for the six months ended June 30, 2005. The \$41,531 increase was primarily a result of the sale of auction rate securities for the six months ended June 30, 2006, offset by a release of restricted investments in the first quarter of 2005. Capital expenditures increased \$16,917 to \$27,780 for the six months ended June 30, 2006 from \$10,863 for the six months ended June 30, 2005 as a result of costs associated with a launch vehicle and our subscriber management system.

For the remainder of 2006, we will incur significant capital expenditures to secure a satellite and launch vehicle and to improve our terrestrial repeater network and broadcast and administrative infrastructure. These capital expenditures will support the resiliency of our operations and the growth we are experiencing, as well as support the delivery of new revenue streams in the future.

Net Cash Provided by Financing Activities. Net cash provided by financing activities decreased \$3,120 to \$2,976 for the six months ended June 30, 2006 from \$6,096 for the six months ended June 30, 2005 due to a reduction in proceeds received from the exercise of stock options.

#### Financings and Capital Requirements

We have financed our operations principally through the sale of debt and equity securities. In August 2005, we sold \$500,000 in aggregate principal amount of our  $9_8$ % Senior Notes due 2013 resulting in net proceeds of \$493,005.

#### Future Liquidity and Capital Resource Requirements

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. We expect to generate positive free cash flow for the full year 2007, and our first quarter of positive free cash flow could be reached as early as the fourth quarter of 2006. Our financial projections are based on assumptions, which we believe are reasonable but contain significant uncertainties.

Our business is in its early stages, and we regularly evaluate our plans and strategy. These evaluations often result in changes to our plans and strategy, some of which may be material and significantly change our cash requirements or cause us to achieve cash flow breakeven at a later date. These changes in our plans or strategy may include: the acquisition of unique or compelling programming; the introduction of new features or services; significant new or enhanced distribution arrangements; investments in infrastructure, such as satellites, equipment or radio spectrum; and acquisitions of third parties that own programming, distribution, infrastructure, assets, or any combination of the foregoing.

In June 2006, we entered into a Credit Agreement with Space Systems/Loral. Under the Credit Agreement, Space Systems/Loral has agreed to make loans to us in an aggregate principal amount of up to \$100,000 to finance the purchase of our new satellite. Loans made under the Credit Agreement will be secured by our rights under the Satellite Purchase Agreement with Space Systems/Loral, including our rights to the new satellite. The loans are also entitled to the benefits of a subsidiary guarantee from Satellite CD Radio, Inc., our subsidiary that holds our FCC license, and any future material subsidiary that may be formed by us. The maturity date of the loans is the earliest to occur of (i) April 6, 2009, (ii) 90 days after the new satellite becomes available for shipment and (iii) 30 days prior to the scheduled launch of the new satellite. Any loans made under the Credit Agreement generally will bear interest at a variable rate equal to three-month LIBOR plus 4.75%. The Credit Agreement permits us to prepay all or a portion of the loans outstanding without penalty. We have no current plans to draw under this Credit Agreement.

To fund incremental cash requirements, or as market opportunities arise, we may choose to raise additional funds through the sale of additional debt securities, equity securities or a combination of debt and equity securities. The incurrence of additional indebtedness would result in increased fiscal obligations and could contain restrictive covenants. The sale of additional equity or convertible debt securities would result in dilution to our stockholders. These additional sources of funds may not be available or, if available, may not be available on terms favorable to us.

#### 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. Employees, consultants and members of our board of directors are eligible to receive awards under the 2003 Plan. The 2003 Plan provides for the grant of stock options, restricted stock, restricted stock units and other stock-based awards that the compensation committee of our board of directors may deem appropriate.

Vesting and other terms of stock-based awards are set forth in the agreements with the individuals receiving the awards. Stock-based awards granted under the 2003 Plan are generally subject to a vesting requirement that includes one or all of the following: (1) over time, generally three to five years from the date of grant; (2) on a specific date in future periods, with acceleration to earlier periods if performance criteria are satisfied; or (3) as certain performance targets set at the time of grant are achieved. Stock-based awards generally expire ten years from date of grant. Each restricted stock unit entitles the holder to receive one share of our common stock upon vesting.

As of June 30, 2006, approximately 93,581,000 stock options, shares of restricted stock and restricted stock units were outstanding. As of June 30, 2006, approximately 86,283,000 shares of our common stock were available for grant under the 2003 Plan. During the six months ended June 30, 2006, employees exercised 1,934,521 stock options at exercise prices ranging from \$0.47 to \$3.93 per share, resulting in proceeds to us of \$2,786. The exercise of the remaining outstanding, vested options could result in an inflow of cash in future periods.

#### **Contractual Cash Commitments**

The following table summarizes our expected contractual cash commitments as of June 30, 2006:

	Remaining 2006	2007	2008	2009	2010	Thereafter	Total
Long-term debt obligations	\$ —	\$ —	\$ 52,185	\$ 301,744	\$ —	\$ 730,000	\$ 1,083,929
Cash interest payments	32,789	65,578	64,665	59,856	55,600	152,878	431,366
Lease obligations	4,451	9,135	8,925	8,881	8,665	32,250	72,307
Satellite and transmission	46,565	24,975	81,475	39,758	2,137	8,337	203,247
Programming and content	70,927	118,055	122,647	146,019	148,560	66,167	672,375
Customer service and billing	750	3,138	_	_	_	_	3,888
Marketing and distribution	56,572	39,733	27,526	19,050	20,425	12,568	175,874
Chip set development and production	5,659	3,467	_	_	_	_	9,126
Other	4,270	415	168	11	_	_	4,864
Total contractual cash commitments	\$221,983	\$264,496	\$357,591	\$575,319	\$235,387	\$1,002,200	\$2,656,976

Long-Term Debt Obligations. Long-term debt obligations include principal payments on our outstanding debt.

Cash Interest Payments. Cash interest payments include interest due on our outstanding debt through maturity.

Lease Obligations. We have entered into operating leases related to our studios, office space, terrestrial repeaters and equipment.

Satellite and Transmission. We have entered into agreements with third parties to operate and maintain certain components of our terrestrial repeater network. We have also entered into an agreement with Space Systems/Loral for the design and construction of a new satellite. Construction of this satellite is expected to be completed in the fourth quarter of 2008. We plan to launch this satellite on a Proton rocket under our contract with International Launch Services.

Programming and Content. We have entered into agreements with licensors of programming and other content providers 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 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 also 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 third parties to develop, produce and supply chip sets, and in certain instances to license intellectual property related to such chip sets.

Other. We have entered into an agreement with Canadian Broadcasting Corporation and Standard Broadcasting Corporation to fund SIRIUS Canada. We have also entered into various agreements with third parties for general operating purposes. Amounts associated with SIRIUS Canada and these various other agreements are included in the commitments table.

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

Under the terms of a joint development agreement with XM 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 engineering, design and development expense. We are currently unable to determine the expenditures necessary to complete this process, but we do not expect that these expenditures will be material.

Our 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 channel.

We are required under the terms of certain agreements to provide letters of credit and deposit monies in escrow, which place restrictions on our cash and cash equivalents. As of June 30, 2006 and December 31, 2005, \$108,315 and \$107,615, respectively, were classified as restricted investments as a result of our reimbursement obligations under these letters of credit and escrow arrangements.

As of June 30, 2006, we have not entered into any off-balance sheet arrangements or transactions.

#### **Critical Accounting Policies**

For a description of our Critical Accounting Policies refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations" within our Annual Report on Form 10-K for the year ended December 31, 2005 and Note 3 to the unaudited consolidated financial statements, Summary of Significant Accounting Policies, of this Form 10-Q. During the six months ended June 30, 2006, we adopted SFAS No. 123R.

#### Item 3. Quantitative and Qualitative Disclosures about Market Risk

As of June 30, 2006, we did not have any derivative financial instruments and we do not intend to use derivatives. We do not hold or issue any free-standing derivatives. We hold investments in marketable securities, which consist of certificates of deposit and auction rate securities. We classify our marketable securities as available-for-sale. These securities are consistent with the investment objectives contained within our investment policy. The basic objectives of our investment policy are the preservation of capital, maintaining sufficient liquidity to meet operating requirements and maximizing yield. Despite the underlying long-term maturity of auction rate securities, from the investor's perspective, such securities are priced and subsequently traded as short-term investments because of the interest rate reset feature. Interest rates are reset through an auction process at predetermined periods of 28 or 35 days. Failed auctions rarely occur. As of June 30, 2006, we held \$48,425 in auction rate securities.

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

#### Item 4. Controls and Procedures

As of June 30, 2006, an evaluation was performed under the supervision and with the participation of our management, including Mel Karmazin, our Chief Executive Officer, and David J. Frear, our Executive Vice President and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on that evaluation, our management, including our Chief Executive Officer and our Chief Financial Officer, concluded that our disclosure controls and procedures were effective as of June 30, 2006. There have been no significant changes in our internal control over financial reporting or in other factors that could materially affect, or is reasonably likely to materially affect, our internal control over financial reporting for the three and six months ended June 30, 2006.

#### Part II

#### Other Information

#### Item 1. Legal Proceedings

In April 2006, we learned that two manufacturers of SIRIUS radios and our principal competitor had received inquiries from the Federal Communications Commission as to whether the FM transmitters in their products complied with the FCC's emissions and frequency rules. We promptly began an internal review of the compliance of the FM transmitters in a number of our radios. On June 20, we received a letter directly from the FCC making similar inquiries. On July 12, we responded to the letter from the FCC in respect of the preliminary results of our review. On August 7, we received a follow-up letter of inquiry from the FCC.

During our internal review, we determined that certain of our radios with FM transmitters were not compliant with FCC rules. We have taken a series of actions to evaluate, mitigate and correct the problem. We directed manufacturers of SIRIUS radios with FM transmitters to suspend manufacture and shipment to retailers of non-compliant devices and to make the necessary changes in production to bring the radios into compliance.

In connection with our internal review, we discovered that certain SIRIUS personnel requested manufacturers to produce SIRIUS radios that were not consistent with the FCC's rules. As a result of this review, we are taking significant steps to ensure that this situation does not happen again, including the adoption of a comprehensive compliance plan, approved by our board of directors, to ensure that in the future our products comply with all applicable FCC rules.

The FCC is continuing its review of our products as well as products of other companies containing FM transmitters. The FCC's laboratory has tested a number of our products and found them to be compliant with the FCC's rules. Based upon this testing, the FCC has permitted a grant of authority for the Starmate Replay to remain effective, and we expect the FCC to permit new equipment authorizations for other products shortly, including the Sportster Replay, Sirius One and U.S. Electronic's Visor. We believe our radios that are currently in production comply with applicable FCC rules. SIRIUS radios that include compliant FM transmitters may be subject to some transmission noise, which may result in us encouraging professional installation in some cases. We continue to study methods to improve the customer experience for our subscribers using SIRIUS radios that rely on FM transmissions.

We continue to cooperate with the FCC's on-going inquiry. As part of this cooperation, we are discussing with the FCC the proper testing methodology for SIRIUS radios that include FM transmitters and methods to bring devices in retail inventory or in consumers' hands into compliance with the FCC's rules.

No health or safety issues are involved with these SIRIUS radios and radios which are factory-installed in new vehicles are not affected. We do not expect the resolution of these issues to have an adverse impact on our previous guidance.

#### Item 1A. Risk Factors

Reference is made to the Risk Factors set forth in Part II, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2005. The Risk Factors remain applicable from our Form 10-K with the exception of the following changes:

#### Failure of our satellites would significantly damage our business.

Our three satellites were launched in 2000. We do not maintain in-orbit insurance policies covering our satellites. We estimate that two of our in-orbit satellites will have a 13 year useful life and our third in-orbit satellite will have a 15 year useful life from the time they were launched. In June 2006, we adjusted the useful lives of two of our in-orbit satellites from 15 years to reflect the way we intend to operate the constellation. Our operating results would be materially adversely affected if the useful life of our satellites is significantly shorter than

we expect, whether as a result of a satellite failure or technical obsolescence, and we fail to launch replacement satellites in a timely manner.

The useful lives of our satellites will vary and depend on a number of factors, including:

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

Our satellites have experienced circuit failures on their solar arrays. The circuit failures our satellites have experienced to date do not affect our current operations. Additional circuit failures could reduce the estimated useful life of our existing in-orbit satellites.

In the ordinary course of operation, satellites experience failures of component parts and operational and performance anomalies. Components on our in-orbit satellites have failed, and from time to time we have experienced anomalies in the operation and performance of our satellites. These failures and anomalies are expected to continue in the ordinary course, and it is impossible to predict if any of these future events will have a material adverse effect on our operations or the useful life of our existing in-orbit satellites.

If one of our three satellites fails in orbit, our service would be impaired until such time as we successfully launch and commission our spare satellite, which would take six months or more. If two or more of our satellites fail in orbit in close proximity in time, our service could be suspended for at least 24 months. In such event, our business would be materially impacted and we could default on our commitments.

In June 2006, we entered into an agreement with Space Systems/Loral for the design and construction of a new satellite. The new satellite is expected to be completed in the fourth quarter of 2008, and launched shortly thereafter. Satellite launches have significant risks, including launch failure, damage or destruction of the satellite during launch and failure to achieve a proper orbit or operate as planned. Our agreement with Space Systems/Loral does not protect us against the risks inherent in a satellite launch or in-orbit operations.

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

As the holder of one of two FCC licenses to operate a satellite radio service in the United States, we are subject to FCC rules and regulations. The terms of our license require us to meet certain conditions, including designing a receiver that will permit end users to access XM Radio's system; coordination of our satellite radio service with radio systems operating in the same range of frequencies in neighboring countries; and coordination of our communications links to our satellites with other systems that operate in the same frequency band. Non-compliance by us with these conditions could result in fines, additional license conditions, license revocation or other detrimental FCC actions.

The FCC has opened an inquiry into whether the FM transmitters in certain SIRIUS radios comply with the Commission's emissions and frequency rules. We are cooperating with the FCC in its on-going inquiry, and have discovered that certain SIRIUS personnel requested manufacturers to produce SIRIUS radios that were not consistent with these rules. We are taking significant steps to ensure that this situation does not happen again, including the adoption of a comprehensive compliance plan, approved by our board of directors, to ensure that in the future our products comply with all applicable FCC rules. We have directed manufacturers of SIRIUS radios with FM transmitters to suspend manufacture and shipment to retailers of non-compliant devices and to make the necessary changes in production to bring the radios into compliance. We believe our radios that are currently in production comply with applicable FCC rules. SIRIUS radios that include compliant FM transmitters may be subject to some transmission noise, which may result in us encouraging professional installation in some cases. We continue to study methods to improve the customer experience for our subscribers

using SIRIUS radios that rely on FM transmissions. The FCC's inquiry may result in fines, additional license conditions or other FCC actions that are detrimental to our business.

We may also be subject to interference from adjacent radio frequency users if the FCC does not adequately protect us against such interference in its rulemaking process.

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

### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Not applicable.

# Item 3. Defaults Upon Senior Securities

Not applicable.

### Item 4. Submission of Matters to a Vote of Security Holders

At our annual meeting of stockholders held on Tuesday, May 23, 2006, the persons whose names are set forth below were elected as directors. The relevant voting information for each person is set forth opposite such person's name:

	Votes Cast	Votes Cast	
	For	Against	
Leon D. Black	1,264,840,447	17,786,458	
Joseph P. Clayton	1,263,292,443	19,334,462	
Lawrence F. Gilberti	1,263,092,885	19,534,020	
James P. Holden	1,259,994,791	22,632,114	
Mel Karmazin	1,264,308,849	18,318,056	
Warren N. Lieberfarb	1,265,815,821	16,811,084	
Michael J. McGuiness	1,261,336,891	21,290,014	
James F. Mooney	1,259,511,574	23,115,331	

### Item 5. Other Information

Not applicable.

#### Item 6. Exhibits

See Exhibit Index attached hereto.

# 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)

August 9, 2006

# EXHIBIT INDEX

Exhibit	Description		
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).	
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	_	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 Company's Registration Statement on Form S-4 (File No. 333-82303)).	
4.3	_	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).	
4.4	_	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 8\%% 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).	
4.5	_	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 83/4% 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).	
4.6	_	Third Supplemental Indenture, dated as of March 7, 2003, between the Company and HSBC Bank USA, as trustee, relating to the Company's 83/4% 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).	
4.7	_	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).	
4.8	_	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).	
4.9	_	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).	
4.10	_	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).	
4.11	_	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 31/4% Convertible Notes due 2011 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K dated October 13, 2004).	
4.12	_	Indenture, dated as of August 9, 2005, between the Company and The Bank of New York, as trustee relating to the Company's 95/8% Senior Notes due 2013 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on August 12, 2005).	
4.13	_	Common Stock Purchase Warrant granted by the Company to DaimlerChrysler AG dated October 4, 2005 (incorporated by reference to Exhibit 4.13 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005).	
4.14	_	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).	

Exhibit		Description
4.15	_	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).
4.16	_	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).
4.17	_	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)).
4.18	_	Customer Credit Agreement, dated as of May 31, 2006, between the Company and Space Systems/Loral, Inc. (filed herewith).
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 November 18, 2004 between the Company and Mel Karmazin (incorporated by reference to Exhibit 10.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 2004).
*10.3	_	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	_	First Amendment, dated as of August 10, 2005, to the Employment Agreement, dated as of June 3, 2003, between the Company and David Frear (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K dated August 12, 2005).
*10.5	_	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).
*10.6	_	First Amendment, dated as of August 8, 2005, to the Employment Agreement, dated as of May 5, 2004, between the Company and Scott Greenstein (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated August 12, 2005).
*10.7	_	Amended and Restated Employment Agreement, dated as of March 11, 2005, between the Company and James E. Meyer (incorporated by reference to Exhibit 10.5 to the Company's Annual Report on Form 10-K for the year ended December 31, 2004).
*10.8	_	First Amendment, dated February 2, 2006, to the Amended and Restated Employment Agreement, dated March 11, 2005, between the Company and James E. Meyer (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated February 1, 2006).
*10.9	_	Restricted Stock Unit Agreement, dated as of August 9, 2005, between the Company and James E. Meyer (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K dated August 12, 2005).
*10.10	_	Employment Agreement, dated as of November 8, 2004, between the Company and Patrick L. Donnelly (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004).1
*10.11	_	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)).
*10.12	_	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).

Exhibit	_	Description
*10.13	_	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).
†10.14	_	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 Mel Karmazin, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
31.2	_	Certificate of David J. Frear, Executive Vice President and Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
32.1	_	Certificate of Mel Karmazin, Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
32.2	_	Certificate of David J. Frear, Executive Vice President and Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).

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

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

CUSTOMER CREDIT AGREEMENT

dated as of

May 31, 2006

between

SIRIUS SATELLITE RADIO INC.

and

SPACE SYSTEMS/LORAL, INC.

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EXHIBIT C EXHIBIT D This CUSTOMER CREDIT AGREEMENT dated as of May 31, 2006 (this "AGREEMENT") is entered into between SIRIUS SATELLITE RADIO INC., a corporation incorporated under the laws of Delaware (the "CUSTOMER"), and SPACE SYSTEMS/LORAL, INC. ("SS/L"), a corporation incorporated under the laws of Delaware (together with its successors and any other Person that shall become a party hereto as a Lender pursuant to Section 9.04, the "LENDER").

The Customer has requested that the Lender make credit extensions to it and the Lender is prepared to make loans to the Customer upon the terms and conditions hereof. Accordingly, the parties hereto agree as follows:

### ARTICLE I.

### **DEFINITIONS**

SECTION 1.01. DEFINED TERMS. As used in this Agreement, the following terms have the meanings specified below:

- "ADDITIONAL ASSETS" means (1) any property, plant, license or equipment used in a Related Business; (2) the Capital Stock of a Person that becomes a Subsidiary Guarantor as a result of the acquisition of such Capital Stock by the Customer or another Subsidiary Guarantor; or (3) Capital Stock constituting a minority interest in any Person that at such time is a Subsidiary Guarantor; PROVIDED, HOWEVER, that any such Subsidiary Guarantor described in clause (2) or (3) above is primarily engaged in a Related Business.
- "ADJUSTED LIBOR RATE" means, for any Interest Period for any Eurodollar Loan, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the LIBOR Rate for such Interest Period.
- "AFFILIATE" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.
  - "AGREEMENT" has the meaning assigned to such term in the Preamble.
- "ASSET DISPOSITION" means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) by the Customer or any Subsidiary Guarantor, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a "disposition"), of:
- (1) any shares of Capital Stock of a Subsidiary Guarantor (other than directors' qualifying shares or shares required by applicable law to be held by a Person other than the Customer or a Subsidiary Guarantor);

- (2) all or substantially all the assets of any division or line of business of the Customer or any Subsidiary Guarantor; or
- (3) any other assets of the Customer or any Subsidiary Guarantor outside of the ordinary course of business of the Customer or such Subsidiary Guarantor

(other than, in the case of clauses (1), (2) and (3) above,

- (A) a disposition by a Subsidiary Guarantor to the Customer or by the Customer or a Subsidiary Guarantor to a Subsidiary Guarantor;
- (B) for purposes of Section 6.05 only, a disposition that constitutes a Restricted Payment (or would constitute a Restricted Payment but for the exclusions from the definition thereof) and that is not prohibited by Section 6.03 and the making of an Asset Swap;
- (C) a disposition of assets with a fair market value of less than \$10 million;
- (D) a disposition of cash or Cash Equivalents;
- (E) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien);
- (F) the licensing or sublicensing of intellectual property or other general intangibles and licenses, leases or subleases of other property; PROVIDED, HOWEVER, such licensing or sublicensing shall not interfere in any material respect with the Customer's continuing use of such intellectual property or other general intangibles and licenses, leases or subleases of other property; and
- (G) foreclosure on assets).

"ASSET SWAP" means concurrent purchase and sale or exchange of Related Business Assets between the Customer or any of the Subsidiary Guarantors and another Person; PROVIDED that any cash received must be applied in accordance with Section 6.05.

"ATTRIBUTABLE DEBT" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at 9-5/8%, compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended); PROVIDED, HOWEVER, that if such Sale/Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation".

"AVERAGE LIFE" means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing:

- (1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of or redemption or similar payment with respect to such Indebtedness multiplied by the amount of such payment by
  - (2) the sum of all such payments.

"BOARD" means the Board of Governors of the Federal Reserve System of the United States of America.

"BOARD OF DIRECTORS" means the Board of Directors of the Customer or any committee thereof duly authorized to act on behalf of such Board.

"BUSINESS DAY" means any day (a) that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed and (b) if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, a continuation or conversion of or into, or an Interest Period for, a Eurodollar Loan, or to a notice by the Customer with respect to any such borrowing, payment, prepayment, continuation, conversion, or Interest Period, that is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

"CAPITAL LEASE OBLIGATION" means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of Section 6.01, a Capital Lease Obligation will be deemed to be secured by a Lien on the property being leased.

"CAPITAL STOCK" of any Person means any and all shares, interests (including partnership interests), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

"CASH EQUIVALENTS" means any of the following:

- (1) any investment in direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof;
- (2) investments in demand and time deposit accounts, certificates of deposit and money market deposits maturing within 365 days of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any State thereof or any foreign country recognized by the United States of America, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of \$50 million (or the foreign currency equivalent thereof) and has outstanding debt which is rated "A" (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating

organization (as defined in Rule 436 under the Securities Act of 1933, as amended), or any money-market fund sponsored by a registered broker dealer or mutual fund distributor;

- (3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) above entered into with a bank meeting the qualifications described in clause (2) above;
- (4) investments in commercial paper, maturing not more than 365 days after the date of acquisition, issued by a corporation (other than an Affiliate of the Customer) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of "P-2" (or higher) according to Moody's or "A-2" (or higher) according to Standard & Poor's;
- (5) auction rate preferred stock issued by a corporation and certificates issued by a corporation or municipality or government entity (other than an Affiliate of the Customer) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States with a rating at the time as of which any Investment therein is made of "A" (or higher) according to Moody's or Standard & Poor's;
- (6) investments in securities with maturities of twelve months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least "A" by Standard & Poor's or "A" by Moody's; and
  - (7) investments in money market funds that, in the aggregate, have at least \$1 billion in assets.
  - "CHANGE OF CONTROL" means the occurrence of any of the following events:
- (1) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (1) such person shall be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Customer (for the purposes of this clause (1), such other person shall be deemed to beneficially own any Voting Stock of a Person (the "specified person") held by any other Person (the "parent entity"), if such other person is the beneficial owner (as defined in this clause (1)), directly or indirectly, of more than 50% of the voting power of the Voting Stock of such parent entity);
- (2) individuals who on the date hereof constituted the Board of Directors (together with any new directors whose election by such Board of Directors or whose nomination for election by the stockholders of the Customer was approved by a vote of a majority of the directors of the Customer then still in office who were either directors on the date of this Agreement or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors then in office;

- (3) the adoption of a plan relating to the liquidation or dissolution of the Customer; or
- (4) the merger or consolidation of the Customer with or into another Person or the merger of another Person with or into the Customer, or the sale of all or substantially all the assets of the Customer (determined on a consolidated basis) to another Person other than a transaction following which (A) in the case of a merger or consolidation transaction, holders of securities that represented 100% of the Voting Stock of the Customer immediately prior to such transaction (or other securities into which such securities are converted as part of such merger or consolidation transaction) own, directly or indirectly, at least a majority of the voting power of the Voting Stock of the surviving Person in such merger or consolidation transaction immediately after such transaction and (B) in the case of a sale of assets transaction, each transferee becomes an obligor in respect of the Loans and a Subsidiary of the transferor of such assets.

"CODE" means the Internal Revenue Code of 1986, as amended from time to time.

"COLLATERAL" has the meaning assigned to such term in the Security Agreement.

"COLLATERAL PERMITTED LIENS" means:

- (1) Liens created pursuant to the Loan Documents;
- (2) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings in compliance with Section 5.07; and
- (3) Liens for taxes, assessments or other governmental charges not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings in compliance with Section 5.07.
- "COMMITMENT" means the Commitment of the Lender to make the Loans hereunder, expressed as an amount representing the maximum aggregate amount of the Loans to be made by the Lender hereunder. The total amount of the Commitment is \$100,000,000, as such amount may be reduced as provided in the definition of the term "Unused Commitment".
- "CONSOLIDATED INCOME TAX EXPENSE" means, with respect to the Customer for any period, the provision for federal, state, local and foreign taxes based on income or profits (including franchise taxes) payable by the Customer and the Subsidiary Guarantors for such period as determined on a consolidated basis in accordance with GAAP.
- "CONSOLIDATED INTEREST EXPENSE" means, for any period, the total interest expense of the Customer and the Subsidiary Guarantors for such period, whether paid or accrued and whether or not capitalized (including amortization of debt issuance costs and original issue discount), non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease

Obligations and Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations.

"CONSOLIDATED LEVERAGE RATIO" as of any date of determination means the ratio of (x) the aggregate amount of Indebtedness of the Customer and the Subsidiary Guarantors as of such date of determination to (y) Consolidated Operating Cash Flow for the most recent four consecutive fiscal quarters ending prior to such date of determination for which financial information is available (the "REFERENCE PERIOD"); PROVIDED, HOWEVER, that:

- (1) if the transaction giving rise to the need to calculate the Consolidated Leverage Ratio is an Incurrence of Indebtedness, the amount of such Indebtedness shall be calculated after giving effect on a pro forma basis to such Indebtedness;
- (2) if the Customer or any Subsidiary Guarantor has repaid, repurchased, defeased or otherwise discharged any Indebtedness that was outstanding as of the end of such fiscal quarter or if any Indebtedness is to be repaid, repurchased, defeased or otherwise discharged on the date of the transaction giving rise to the need to calculate the Consolidated Leverage Ratio (other than, in each case, Indebtedness Incurred under any revolving credit agreement), the aggregate amount of Indebtedness shall be calculated on a pro forma basis and Consolidated Operating Cash Flow shall be calculated as if the Customer or such Subsidiary Guarantor had not earned the interest income, if any, actually earned during the Reference Period in respect of cash or Cash Equivalents used to repay, repurchase, defease or otherwise discharge such Indebtedness;
- (3) if since the beginning of the Reference Period the Customer or any Subsidiary Guarantor shall have made any Asset Disposition, the Consolidated Operating Cash Flow for the Reference Period shall be reduced by an amount equal to the Consolidated Operating Cash Flow (if positive) directly attributable to the assets which are the subject of such Asset Disposition for the Reference Period or increased by an amount equal to the Consolidated Operating Cash Flow (if negative) directly attributable thereto for the Reference Period;
- (4) if since the beginning of the Reference Period the Customer or any Subsidiary Guarantor (by merger or otherwise) shall have made an Investment in any Subsidiary Guarantor (or any Person which becomes a Subsidiary Guarantor) or an acquisition of assets which constitutes all or substantially all of an operating unit of a business, Consolidated Operating Cash Flow for the Reference Period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition had occurred on the first day of the Reference Period; and
- (5) if since the beginning of the Reference Period any Person (that subsequently became a Subsidiary Guarantor or was merged with or into the Customer or any Subsidiary Guarantor since the beginning of such Reference Period) shall have made any Asset Disposition, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (3) or (4) above if made by the Customer or a Subsidiary Guarantor during the Reference Period, Consolidated Operating Cash Flow for the Reference Period shall be

calculated after giving pro forma effect thereto as if such Asset Disposition, Investment or acquisition had occurred on the first day of the Reference Period.

For purposes of this definition, whenever pro forma effect is to be given to an acquisition of assets, the amount of income or earnings relating thereto and the amount of Consolidated Interest Expense associated with any Indebtedness Incurred in connection therewith, the pro forma calculations shall be determined in accordance with GAAP in good faith by a responsible financial or accounting officer of the Customer. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness if such Interest Rate Agreement has a remaining term in excess of 12 months). If any Indebtedness is Incurred under a revolving credit facility and is being given pro forma effect, the interest on such Indebtedness shall be calculated based on the average daily balance of such Indebtedness for the four fiscal quarters subject to the pro forma calculation to the extent such Indebtedness was Incurred solely for working capital purposes.

"CONSOLIDATED NET INCOME" means, for any period, the net income of the Customer and its consolidated Subsidiaries; PROVIDED, HOWEVER, that there shall not be included in such Consolidated Net Income:

- (1) any net income of any Person (other than the Customer) if such Person is not a Subsidiary Guarantor, except that:
  - (A) subject to the exclusion contained in clauses (3), (4) and (5) below, the Customer's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Customer or a Subsidiary Guarantor as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Subsidiary Guarantor, to the limitations contained in clause (2) below); and
  - (B) the Customer's equity in a net loss of any such Person for such period shall be included in determining such Consolidated Net Income to the extent such loss has been funded with cash from the Customer or a Subsidiary Guarantor;
- (2) any net income of any Subsidiary Guarantor if such Subsidiary Guarantor is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Subsidiary Guarantor, directly or indirectly, to the Customer, except that:
  - (A) subject to the exclusion contained in clauses (3), (4) and (5) below, the Customer's equity in the net income of any such Subsidiary Guarantor for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Subsidiary Guarantor during such period

- to the Customer or another Subsidiary Guarantor as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Subsidiary Guarantor, to the limitation contained in this clause); and
- (B) the Customer's equity in a net loss of any such Subsidiary Guarantor for such period shall be included in determining such Consolidated Net Income;
- (3) any gain (or loss) realized upon the sale or other disposition of any assets of the Customer or its consolidated Restricted Subsidiaries (including pursuant to any Sale/Leaseback Transaction) which is not sold or otherwise disposed of in the ordinary course of business and any gain (or loss) realized upon the sale or other disposition of any Capital Stock of any Person;
  - (4) extraordinary gains or losses; and
  - (5) the cumulative effect of a change in accounting principles,

in each case, for such period. Notwithstanding the foregoing, for the purpose of Section 6.06 only, there shall be excluded from Consolidated Net Income any repurchases, repayments or redemptions of Investments, proceeds realized on the sale of Investments or return of capital to the Customer or a Subsidiary Guarantor to the extent such repurchases, repayments, redemptions, proceeds or returns increase the amount of Restricted Payments permitted under such Section pursuant to Section 6.06(a)(3)(D)

"CONSOLIDATED OPERATING CASH FLOW" means, with respect to the Customer and the Subsidiary Guarantors on a consolidated basis, for any period, an amount equal to Consolidated Net Income for such period increased (without duplication) by the sum of:

- (1) Consolidated Income Tax Expense accrued for such period to the extent deducted in determining Consolidated Net Income for such period;
- (2) Consolidated Interest Expense for such period to the extent deducted in determining Consolidated Net Income for such period; and

depreciation, amortization and any other noncash items for such period to the extent deducted in determining Consolidated Net Income for such period (other than any noncash item which requires the accrual of, or a reserve for, cash charges for any future period) of the Customer and the Subsidiary Guarantors (including amortization of capitalized debt issuance costs for such period, any noncash compensation expense realized for grants of stock options or other rights to officers, directors, consultants and employees and noncash charges related to equity granted to third parties), all of the foregoing determined on a consolidated basis in accordance with GAAP, and decreased by noncash items to the extent they increase Consolidated Net Income (including the partial or entire reversal of reserves taken in prior periods, but excluding reversals of accruals or reserves for cash charges taken in prior periods) for such period.

"CONSOLIDATED TOTAL ASSETS" means the total assets of the Customer and its consolidated the Subsidiary Guarantors, as shown on the most recent balance sheet of the Customer, determined on a consolidated basis in accordance with GAAP.

"CUSTOMER" has the meaning assigned to such term in the Preamble.

"DEFAULT" means any event or condition that upon notice, lapse of time or both would, unless waived, become an Event of Default.

"DEFAULT INTEREST PERIOD" means, during any period in which any principal of the Loan or any other amount under this Agreement or any other Loan Document is not paid when due, each successive period as the Lender shall from time to time choose; PROVIDED that (a) no such period shall exceed three months' duration and (b) the first such period shall commence as of the date on which such principal or other amount became due and each succeeding period shall commence upon the expiry of the immediately preceding period.

"DEPOSIT ACCOUNT" means the account of the Customer at JPMorganChase, New York, New York, routing number 021000021, account number 323-899587.

"DESIGNATED JOINT VENTURES" means any Person formed for the purpose of, or whose principal business is, offering a satellite radio service outside the continental United States; PROVIDED, HOWEVER, that the aggregate Investment in such Persons by the Customer and the Subsidiary Guarantors does not exceed \$100 million in the aggregate at any time outstanding (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value).

"DISQUALIFIED STOCK" means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

- (1) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;
  - (2) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or
  - (3) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part;

in each case on or prior to the date that is 91 days after the Maturity Date of the Loans; PROVIDED, HOWEVER, that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Capital Stock upon the occurrence of an "asset sale" or "change of control" shall not constitute Disqualified Stock if:

(A) the "asset sale" or "change of control" provisions applicable to such Capital Stock are not more favorable to the holders of such

Capital Stock than the terms applicable to the Loans in Section 6.05 of this Agreement; and

(B) any such requirement only becomes operative after compliance with such terms applicable to the Loans, including the prepayment of Loans.

The amount of any Disqualified Stock that does not have a fixed redemption, repayment or repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Stock is to be determined pursuant to this Agreement; PROVIDED, HOWEVER, that if such Disqualified Stock could not be required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price will be the book value of such Disqualified Stock as reflected in the most recent financial statements of such Person.

"DOLLARS" or "\$" refers to lawful money of the United States of America.

"EFFECTIVE DATE" means the date on which the conditions specified in Section 4.01 and Section 4.02 are satisfied (or waived in accordance with Section 9.02).

"ENVIRONMENTAL LAWS" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"ENVIRONMENTAL LIABILITY" means any liability, contingent or otherwise, of the Customer or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA AFFILIATE" means any trade or business (whether or not incorporated) that, together with the Customer, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA EVENT" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section

303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Customer or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Customer or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Customer or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Customer or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Customer or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"EURODOLLAR", when used in reference to a Loan, refers to whether the Loan is bearing interest at a rate determined by reference to the Adjusted LIBOR Rate.

"EVENT OF DEFAULT" has the meaning assigned to such term in Article VII.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended.

"EXCLUDED TAXES" means, with respect to the Lender or any other recipient of any payment to be made by or on account of any obligation of the Customer hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of the Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Customer is located, (c) any Taxes that would not have been imposed but for the activities of the recipient in the jurisdiction imposing such Tax which are not related to this Agreement or any of the other Loan Documents or the transactions contemplated by the Loan Documents, including the execution and delivery of the Loan Documents and the administration of the provisions or exercise of rights and remedies under the Loan Documents; (d) United States withholding taxes imposed on amounts payable to a Lender at the time such Lender becomes a party to this Agreement, except to the extent that such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Customer with respect to Indemnified Taxes; and (e) any Taxes that are attributable to Lender's failure to comply with the requirements of Section 2.09(e) of this Agreement.

"FCC" means the Federal Communications Commission.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time.

"GOVERNMENT APPROVALS" means all authorizations, consents, approvals, licenses, rulings, permits, certifications, exemptions, filings or registrations by or with a Governmental Authority required by applicable requirements of law to be obtained or held by the Customer or any Affiliate thereof in connection with (a) the due execution, delivery and performance by the Customer and the Subsidiary Guarantors of their respective obligations under this Agreement, the Subsidiary Guarantees and the other Loan Documents to which they are a

party and (b) the grant of Liens created by the Security Documents and the validity, enforceability and perfection thereof and the exercise by the Lender of its rights and remedies thereunder.

"GOVERNMENTAL AUTHORITY" means any international body or any nation or government, any state of political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled, through stock or capital or otherwise, by any of the foregoing.

"GUARANTEE" of or by any Person (the "GUARANTOR") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "PRIMARY OBLIGOR") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect,

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof,
- (2) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof,
- (3) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or
- (4) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; PROVIDED that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.
- "HAZARDOUS MATERIALS" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"HEDGING OBLIGATIONS" of any Person means the obligations of such Person under (a) currency exchange or interest rate swap agreements, currency exchange or interest rate cap agreements or currency exchange or interest rate collar agreements or (b) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange or interest rate prices.

"INCUR" means issue, assume, Guarantee, incur or otherwise become liable for; PROVIDED, HOWEVER, that any Indebtedness of a Person existing at the time such Person becomes a Subsidiary Guarantor (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary Guarantor.

The term "INCURRENCE" when used as a noun shall have a correlative meaning. Solely for purposes of determining compliance with Section 6.02:

- (1) amortization of debt discount or the accretion of principal with respect to a non-interest bearing or other discount security;
- (2) the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Capital Stock in the form of additional Capital Stock of the same class and with the same terms; and
- (3) the obligation to pay a premium in respect of Indebtedness arising in connection with the issuance of a notice of redemption or making of a mandatory offer to purchase such Indebtedness will not be deemed to be the Incurrence of Indebtedness.
  - "INDEBTEDNESS" means, with respect to any Person on any date of determination (without duplication):
- (1) the principal in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;
- (2) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale/Leaseback Transactions entered into by such Person;
- (3) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding any accounts payable or other liability to trade creditors arising in the ordinary course of business), in each case only if and to the extent due more than 12 months after the delivery of property;
- (4) the principal component of all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers' acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (1) through (3) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit);
- (5) the principal component of the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock of such Person or, with respect to any Preferred Stock of any Subsidiary Guarantor of such Person, the principal amount of such Preferred Stock to be determined in accordance with this Agreement (but excluding, in each case, any accrued dividends);
- (6) all obligations of the type referred to in clauses (1) through (5) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person

is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

- (7) all obligations of the type referred to in clauses (1) through (6) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the fair market value of such property or assets and the amount of the obligation so secured; and
  - (8) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

Notwithstanding the foregoing, in connection with the purchase by the Customer or any Subsidiary Guarantor of any business, the term "Indebtedness" will exclude post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; PROVIDED, HOWEVER, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter. Furthermore, in no event shall the Customer's obligations to pay amounts under any programming or content acquisition arrangements, in each case, consistent with past practice, be considered Indebtedness.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all obligations as described above; PROVIDED, HOWEVER, that in the case of Indebtedness sold at a discount, the amount of such Indebtedness at any time will be the accreted value thereof at such time.

- "INDEMNIFIED TAXES" means Taxes other than Excluded Taxes.
- "INDEMNITEE" has the meaning assigned to such term in Section 9.03(b).
- "INDENTURE" means the indenture dated as of August 9, 2005 relating to the 9-5/8% senior notes due 2013 issued by the Customer thereunder, as in effect on the date hereof.
- "INDEPENDENT QUALIFIED PARTY" means an investment banking firm, accounting firm or appraisal firm of national standing; PROVIDED, HOWEVER, that such firm is not an Affiliate of the Customer.
  - "INFORMATION" has the meaning assigned to such term in Section 9.11.

"INTEREST PERIOD" means, with respect to any Loan, each period of three calendar months ending on March 31, June 30, September 30 and December 31, respectively; PROVIDED that the first period shall commence on the date such Loan is made hereunder and end on the immediately succeeding March 31, June 30, September 30 or December 31, as the case may be; and PROVIDED, FURTHER, that if any Interest Period would otherwise end after the Maturity Date, such Interest Period shall end on the Maturity Date.

"INTEREST RATE AGREEMENT" means any interest rate swap agreement, interest rate cap agreement or other financial agreement or arrangement with respect to exposure to interest rates.

"INVESTMENT" in any Person means any direct or indirect advance, loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of the lender) or other extensions of credit (including by way of Guarantee or similar arrangement) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by such Person. If the Customer or any Subsidiary Guarantor issues, sells or otherwise disposes of any Capital Stock of a Person that is a Subsidiary Guarantor such that, after giving effect thereto, such Person is no longer a Subsidiary Guarantor, any Investment by the Customer or any Subsidiary Guarantor in such Person remaining after giving effect thereto will be deemed to be a new Investment at such time. Except as otherwise provided for herein, the amount of an Investment shall be its fair market value at the time the Investment is made and without giving effect to subsequent changes in value; PROVIDED that none of the following will be deemed to be an Investment:

- (1) Hedging Obligations entered into in the ordinary course of business and in compliance with this Agreement;
- (2) endorsements of negotiable instruments and documents in the ordinary course of business;
- (3) an acquisition of assets by the Customer or a Subsidiary for consideration to the extent such consideration consists of Common Stock of the Customer; and
- (4) advances, deposits, escrows or similar arrangements in respect of retail or automotive distribution arrangements, programming or content acquisitions or extensions.

For purposes of the definition of "Unrestricted Subsidiary", the definition of "Restricted Payment" and Section 6.03, "Investment" shall include:

- (A) the portion (proportionate to the Customer's equity interest in such Subsidiary) of the fair market value of the net assets of any Subsidiary of the Customer at the time that such Subsidiary is designated an Unrestricted Subsidiary; PROVIDED, HOWEVER, that upon a redesignation of such Subsidiary as a Subsidiary Guarantor, the Customer shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary equal to an amount (if positive) equal to (A) the Customer's "Investment" in such Subsidiary at the time of such redesignation less (B) the portion (proportionate to the Customer's equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and
- (B) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors.

"ISSUE DATE" means August 9, 2005.

"LAUNCH AGENCY" means the provider of the launch vehicle used to launch the Satellite.

"LAUNCH DAY" means the day established by the Launch Agency in writing to the Customer for launch of the Satellite. For purposes of this definition, any delay in the actual date of launch from such scheduled launch day shall be disregarded unless the Lender shall have received advance notice of such delay, and such notice was received more than 30 days from the then scheduled launch day.

"LENDER" has the meaning assigned to such term in the Preamble.

"LIBOR RATE" means, for any Interest Period for any Eurodollar Loan, the British Bankers' Association LIBOR rate displayed on the appropriate page on Bloomberg Financial Markets (or any successor to or substitute for such service providing rate quotations comparable to those currently provided on such page of such service, as determined by the Lender from time to time, for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for the offering of Dollar deposits with a maturity of three months or, in the case of the first Interest Period in respect of a Loan where the maturity of such Interest Period is less than three months, the number of months closest to the maturity of such Interest Period and greater than such Interest Period. (For the avoidance of doubt, if a Loan is made during the first month of a quarter, the first Interest Period applicable to such Loan shall be two months and if a Loan is made during the last month of a quarter, the first Interest Period applicable to such Loan shall be two months and if a Loan is made during the last month of a quarter, the first Interest Period applicable to such Loan shall be one month.) If such interest rates shall cease to be available from Bloomberg Financial Markets, the LIBOR Rate shall be determined from such financial reporting service or other information as shall be selected by the Lender with the Customer's approval (which approval shall not be unreasonably withheld or delayed).

"LICENSE" means the applicable license to be issued to the Customer by the FCC that enables the Customer to operate the Satellite as part of its S-band system in the United States.

"LIEN" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"LOAN DOCUMENTS" means, collectively, this Agreement, the Notes, the Security Documents and the Subsidiary Guarantees.

"LOAN" has the meaning assigned to such term in Section 2.01.

"MATERIAL" means material in relation to the business, operations, affairs, financial condition, assets, properties or prospects of the Customer and its Subsidiaries taken as a whole.

"MATERIAL ADVERSE EFFECT" means a material adverse effect on (a) the business, assets, operations or condition of the Customer and its Subsidiaries taken as a whole, (b) the rights of the Customer in respect of the License after the License has been acquired, (c) the ability of the Customer or of the Subsidiary Guarantors to perform any of their respective payment obligations under this Agreement or the Subsidiary Guarantees or any of the other Loan Documents to which they are party, (d) the value of the Collateral or the validity, enforceability or priority of the Liens contemplated under the Security Documents, or (e) the ability of the Lender to exercise any of its rights and/or remedies available under this Agreement or any of the other Loan Documents.

"MATERIAL INDEBTEDNESS" means Indebtedness (other than the Loans and the Subsidiary Guarantees), of the Customer or a Subsidiary Guarantor, as applicable, in each case in an aggregate principal amount exceeding \$25,000,000, and includes, without limitation, the securities issued under the Indenture. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of any Person in respect of any Hedging Obligations at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such Hedging Obligations were terminated at such time.

"MATERIAL SUBSIDIARY" means, as of any date of determination, (a) Satellite CD Radio, Inc. and (b) any Subsidiary of the Customer (i) that accounted for ten percent or more of either Consolidated Net Income or Consolidated Operating Cash Flow for the twelvemonth or six-month period most recently ended for which financial statements have been delivered to the Lender pursuant to Section 5.01(a) or (b), respectively, or (ii) whose total assets constituted ten percent or more of Consolidated Total Assets.

"MATURITY DATE" means the earliest to occur of (a) April 6, 2009, (b) 90 days after the Satellite is "Available for Shipment" (as defined in the Satellite Purchase Agreement), and (c) 30 days prior to the Launch Day for the Satellite.

"MAXIMUM AMOUNT" means, as of any date of calculation, (a) during the period from the Effective Date to and including December 31, 2007, the lesser of (i) the Unused Commitment as of such date and (ii) an amount equal to the sum of (x) the Milestone Payment required to be made by the Customer and remaining unpaid as of such date and (y) all Milestone Payments made by the Customer on or prior to such date (other than with Loan proceeds or for which reimbursement has previously been made to the Customer pursuant to Section 2.01) and (b) during the period from January 1, 2008 to and including the date of expiration or termination of the Commitment in accordance with Section 4.03 of this Agreement, the lesser of (i) the Unused Commitment as of such date and (ii) the Milestone Payment required to be made by the Customer and remaining unpaid as of such date.

"MILESTONE PAYMENT" means each payment set forth on Exhibit F to the Satellite Purchase Agreement (other than the payment captioned "On-Orbit Acceptance of the Spacecraft" and any other In-Orbit Incentive Payment, as defined in the Satellite Purchase

Agreement) required to be made by the Customer to the Satellite Manufacturer under the Satellite Purchase Agreement.

"MILESTONE PAYMENT DATE" means each date on which a Milestone Payment is due under the Satellite Purchase Agreement.

- "MOODY'S" means Moody's Investors Service, Inc. and any successor to its rating agency business.
- "MULTIEMPLOYER PLAN" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.
- "NEGOTIATION PERIOD" has the meaning assigned to such term in Section 2.08(a).
- "NET AVAILABLE CASH" from an Asset Disposition means cash payments received therefrom (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to such properties or assets or received in any other non-cash form), in each case net of:
- (1) all legal, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Disposition;
- (2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law, be repaid out of the proceeds from such Asset Disposition;
- (3) all distributions and other payments required to be made to minority interest holders in Subsidiary Guarantors as a result of such Asset Disposition;
- (4) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the property or other assets disposed in such Asset Disposition and retained by the Customer or any Subsidiary Guarantor after such Asset Disposition; and
- (5) any portion of the purchase price from an Asset Disposition placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such Asset Disposition or otherwise in connection with that Asset Disposition; PROVIDED, HOWEVER, that upon the termination of that escrow, Net Available Cash will be increased by any portion of funds in the escrow that are released to the Customer or any Subsidiary Guarantor.

- "NET CASH PROCEEDS" means, with respect to any issuance or sale of Capital Stock or Indebtedness, the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.
  - "NEW SATELLITE" means a satellite that is not in service as of the date hereof.
  - "NOTES" means one or more promissory notes issued by the Customer pursuant to Section 2.04(d).
  - "NOTICE OF BORROWING" means a notice substantially in the form of EXHIBIT A.
- "OBLIGATIONS" means, with respect to any Indebtedness, all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements and other amounts payable pursuant to the documentation governing such Indebtedness.
- "OFFICER" means the chairman of the board, the president, any vice president, the treasurer or the secretary of the Customer or a Subsidiary Guarantor, as the case may be.
  - "OFFICERS' CERTIFICATE" means a certificate signed by two Officers.
- "OPINION OF COUNSEL" means a written opinion from legal counsel who is acceptable to the Lender. The counsel may be an employee of or counsel to the Customer.
- "OTHER TAXES" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.
  - "PARTICIPANT" has the meaning assigned to such term in Section 9.04(c).
- "PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.
  - "PERMITTED INVESTMENT" means an Investment by the Customer or any Subsidiary Guarantor in:
- (1) the Customer, a Subsidiary Guarantor or a Person that will, upon the making of such Investment, become a Subsidiary Guarantor; PROVIDED, HOWEVER, that the primary business of such Subsidiary Guarantor is a Related Business;
- (2) another Person if, as a result of such Investment, such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Customer or a Subsidiary Guarantor; PROVIDED, HOWEVER, that such Person's primary business is a Related Business;

- (3) cash and Cash Equivalents;
- (4) receivables owing to the Customer or any Subsidiary Guarantor if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; PROVIDED, HOWEVER, that such trade terms may include such concessionary trade terms as the Customer or any such Subsidiary Guarantor deems reasonable under the circumstances;
- (5) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;
- (6) loans or advances to employees made in the ordinary course of business consistent with past practices of the Customer or such Subsidiary Guarantor;
- (7) stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Customer or any Subsidiary Guarantor or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of a debtor;
- (8) any Person to the extent such Investment represents the non-cash portion of the consideration received for (A) an Asset Disposition as permitted pursuant to Section 6.05 or (B) a disposition of assets not constituting an Asset Disposition;
- (9) any Person where such Investment was acquired by the Customer or any of the Subsidiary Guarantors (A) in exchange for any other Investment or accounts receivable held by the Customer or any such Subsidiary Guarantor in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable or (B) as a result of a foreclosure by the Customer or any of the Subsidiary Guarantors with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
- (10) any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business by the Customer or any Subsidiary Guarantor;
  - (11) any Person to the extent such Investments consist of Hedging Obligations otherwise permitted under Section 6.02;
- (12) any Person to the extent such Investment existed on the Issue Date, and any extension, modification or renewal of any such Investments existing on the Issue Date, but only to the extent not involving additional advances, contributions or other Investments of cash or other assets or other increases thereof (other than as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investment as in effect on the Issue Date);

- (13) Persons to the extent such Investments, when taken together with all other Investments made pursuant to this clause (13) that are at the time outstanding, do not exceed the greater of (x) \$300 million or (y) 15% of Consolidated Total Assets (as determined based on the consolidated balance sheet of the Customer as of the end of the most recent fiscal quarter for which internal financial statements are available prior to such Investment), at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);
  - (14) Designated Joint Ventures;
- (15) Investments in a joint venture with XM Satellite Radio Inc., or an Affiliate or successor thereof, the proceeds of which Investments are used solely to develop interoperable radio technology capable of receiving and processing radio system signals broadcast by both the Customer and XM Satellite Radio Inc., for the licensing of other satellite radio technology from the Customer and XM Satellite Radio Inc. in connection therewith and for activities reasonably ancillary thereto in accordance with the Joint Development Agreement between the Customer and XM Satellite Radio Inc., as in effect on the date of the Indenture or as it may have been or be amended in an manner not materially adverse to the Customer; and
  - (16) any Asset Swap made in accordance with Section 6.05.
  - "PERMITTED LIENS" means, with respect to any Person:
- (1) pledges or deposits by such Person under worker's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or United States government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;
- (2) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review and Liens arising solely by virtue of any statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; PROVIDED, HOWEVER, that (A) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Customer in excess of those set forth by regulations promulgated by the Federal Reserve Board and (B) such deposit account is not intended by the Customer or any Subsidiary Guarantor to provide collateral to the depository institution;
- (3) Liens for taxes, assessments or other governmental charges not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings;

- (4) Liens in favor of issuers of surety bonds or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business; PROVIDED, HOWEVER, that such letters of credit do not constitute Indebtedness;
- (5) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not Incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;
- (6) Liens securing Indebtedness Incurred to finance the construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment of such Person; PROVIDED, HOWEVER, that the Lien may not extend to any other property owned by such Person or any of the Subsidiary Guarantors at the time the Lien is Incurred (other than assets and property affixed or appurtenant thereto), and the Indebtedness (other than any interest thereon) secured by the Lien may not be Incurred more than 180 days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of the property subject to the Lien;
  - (7) Liens existing on the date hereof;
- (8) Liens on property or shares of Capital Stock of another Person at the time such other Person becomes a Subsidiary Guarantor of such Person; PROVIDED, HOWEVER, that the Liens may not extend to any other property owned by such Person or any of the Subsidiary Guarantors (other than assets and property affixed or appurtenant thereto);
- (9) Liens on property at the time such Person or any of the Subsidiary Guarantors acquires the property, including any acquisition by means of a merger or consolidation with or into such Person or a Subsidiary of such Person; PROVIDED, HOWEVER, that the Liens may not extend to any other property owned by such Person or any of the Subsidiary Guarantors (other than assets and property affixed or appurtenant thereto);
- (10) Liens securing Indebtedness or other obligations of a Subsidiary of such Person owing to such Person or a Wholly Owned Subsidiary of such Person;
  - (11) Liens securing Hedging Obligations so long as such Hedging Obligations are permitted to be Incurred under this Agreement;
  - (12) Liens to secure Indebtedness permitted under Section 6.02(b)(1);
- (13) leases, licenses, subleases and sublicenses of assets (including, without limitation, real property and intellectual property rights) which do not materially interfere with the ordinary conduct of the business of the Customer or any of the Subsidiary Guarantors;

- (14) Liens arising from Uniform Commercial Code financing statement filing regarding operating leases entered into by the Customer and the Subsidiary Guarantors in the ordinary course of business;
- (15) Liens in connection with advances, deposits, escrows and similar arrangements in the ordinary course of business in respect of retail or automotive distribution arrangements, programming and content acquisitions and extensions; and
- (16) Liens to secure any Refinancing (or successive Refinancings) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clause (6), (7), (8) or (9); PROVIDED, HOWEVER, that:
- (A) such new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and
- (B) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clause (6), (7), (8) or (9) at the time the original Lien became a Permitted Lien and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement.

Notwithstanding the foregoing, "Permitted Liens" will not include any Lien described in clause (6), (8) or (9) above to the extent such Lien applies to any Additional Assets acquired directly or indirectly with Net Available Cash pursuant to Section 6.05. For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

"PERMITTED SUBORDINATED OBLIGATIONS" means Subordinated Obligations of the Customer that at the time of Incurrence have a weighted Average Life of not less than the lesser of five years and the remaining weighted Average Life of the Loans and that are convertible at the option of the holders thereof into Capital Stock (other than Disqualified Stock) of the Customer.

"PERSON" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"PLAN" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Customer or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"POST-DEFAULT RATE" has the meaning assigned to such term in Section 2.07(b).

"PREFERRED STOCK", as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"PUBLIC MARKET EQUITY VALUE" means as of any date of calculation, the value derived by multiplying (i) the lowest sale price quoted on NASDAQ for the Customer's common stock on the Business Day immediately prior to such date of calculation TIMES (ii) the number of outstanding shares of the Customer's common stock disclosed in the Customer's most recently filed (i) Quarterly Report on Form 10-Q, (ii) Annual Report on Form 10-K or (iii) Current Report on Form 8-K that reports such number of outstanding shares.

## "PURCHASE MONEY INDEBTEDNESS" means Indebtedness:

- (1) consisting of the deferred purchase price of an asset, conditional sale obligations, obligations under any title retention agreement and other purchase money obligations, in each case where the maturity of such Indebtedness does not exceed the anticipated useful life of the asset being financed, and
- (2) Incurred to finance the acquisition by the Customer or a Subsidiary Guarantor of such asset, including additions and improvements;

PROVIDED, HOWEVER, that such Indebtedness is Incurred within 180 days after the acquisition by the Customer or such Subsidiary Guarantor of such asset.

"REFINANCE" means in respect of Indebtedness, to refinance, extend, renew, refund, repay, purchase, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. "Refinanced" or Refinancing" shall have correlative meanings.

"REFINANCING INDEBTEDNESS" means Indebtedness that Refinances any Indebtedness of the Customer or any Subsidiary Guarantor existing on the Issue Date or Incurred in compliance with this Agreement, including Indebtedness that Refinances Refinancing Indebtedness; PROVIDED, HOWEVER, that:

- (1) such Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced or, if such Refinancing Indebtedness is a Subordinated Obligation, no earlier than 91 days after the Maturity Date of the Loans;
- (2) such Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being Refinanced or, if such Refinancing Indebtedness is a Subordinated Obligation, equal to or greater than the then remaining Average Life of the Loans;
- (3) such Refinancing Indebtedness has an aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted

value) then outstanding (plus fees and expenses, including any premium and defeasance costs) under the Indebtedness being Refinanced; and

(4) if the Indebtedness being Refinanced is subordinated in right of payment to the Loans, such Refinancing Indebtedness (a) is subordinated in right of payment to the Loans at least to the same extent as the Indebtedness being Refinanced, (b) has a Stated Maturity that is at least 91 days after the later of (x) the Maturity Date of the Loans and (y) the Stated Maturity of the Indebtedness being Refinanced and (c) has an Average Life at the time such Refinancing Indebtedness is Incurred that is greater than (x) the Average Life of the Loans and (y) the Average Life of the Indebtedness being Refinanced;

PROVIDED FURTHER, HOWEVER, that Refinancing Indebtedness shall not include (A) Indebtedness of a Subsidiary that Refinances Indebtedness of the Customer or a Subsidiary Guarantor that Refinances Indebtedness of an Unrestricted Subsidiary.

"RELATED BUSINESS" means any business in which the Customer or any of the Subsidiary Guarantors was engaged on the Effective Date and any business related, ancillary or complementary to such business or any business the assets of which, in the good faith determination of the Board of Directors, are useful or may be used in any such business.

"RELATED BUSINESS ASSETS" means assets used or useful in a Related Business.

"RELATED PARTIES" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers and employees of such Person and such Person's Affiliates.

"REPLACEMENT SATELLITE VENDOR INDEBTEDNESS" means Indebtedness of the Customer provided by a satellite or satellite launch vendor, insurer or insurance agent or Affiliate thereof for the (i) construction, launch and insurance of all or part of one or more replacement satellites or satellite launches for such satellites, where "replacement satellite" means a satellite that is used for continuation of the Customer's satellite service as a replacement for, or supplement to, a satellite that is retired or relocated (due to a deterioration in operating useful life) within the existing service area or reasonably determined by the Customer to no longer meet the requirements for such service or (ii) the replacement of a spare satellite that has been launched or that is no longer capable of being launched or suitable for launch. Replacement Satellite Vendor Indebtedness includes any Refinancing Indebtedness thereof.

"REQUIRED LENDERS" means, at any time, Lenders having more than 50% of the aggregate amount of the sum of (a) the Unused Commitment and (b) the then aggregate unpaid principal amount of the Loans. A defaulting lender shall be excluded for the purpose of this determination.

"RESPONSIBLE OFFICER" means, as to the Customer or a Subsidiary Guarantor, as the case may be, the secretary, the assistant secretary, the chief financial officer, the general counsel or such other Person designated by the foregoing.

"RESTRICTED PAYMENT" with respect to any Person means:

- (1) the declaration or payment of any dividends or any other distributions of any sort in respect of its Capital Stock (including any payment in connection with any merger or consolidation involving such Person) or similar payment to the direct or indirect holders of its Capital Stock (other than (A) dividends or distributions payable solely in its Capital Stock (other than Disqualified Stock), (B) dividends or distributions payable solely to the Customer or a Subsidiary Guarantor and (C) pro rata dividends or other distributions made by a Subsidiary that is not a Wholly Owned Subsidiary to minority stockholders (or owners of an equivalent interest in the case of a Subsidiary that is an entity other than a corporation));
- (2) the purchase, redemption, defeasance or other acquisition or retirement for value of any Capital Stock of the Customer held by any Person (other than by a Subsidiary Guarantor) or of any Capital Stock of a Subsidiary Guarantor held by any Affiliate of the Customer (other than by a Subsidiary Guarantor), including in connection with any merger or consolidation and including the exercise of any option to exchange any Capital Stock (other than into Capital Stock of the Customer that is not Disqualified Stock);
- (3) (A) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Permitted Subordinated Obligations of the Customer or (B) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment of any Subordinated Obligations of the Customer (other than, in the case of this clause (B), (i) from the Customer or a Subsidiary Guarantor or (ii) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations (other than Permitted Subordinated Obligations) purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition or retirement); or
  - (4) the making of any Investment (other than a Permitted Investment) in any Person.
- "SALE/LEASEBACK TRANSACTION" means an arrangement relating to property owned by the Customer or a Subsidiary Guarantor on the Issue Date or thereafter acquired by the Customer or a Subsidiary Guarantor whereby the Customer or a Subsidiary Guarantor transfers such property to a Person and the Customer or a Subsidiary Guarantor leases it from such Person.

"SATELLITE" means the Sirius FM-5 Satellite, as such term is defined in the Satellite Purchase Agreement.

"SATELLITE MANUFACTURER" means SS/L.

"SATELLITE PURCHASE AGREEMENT" means the Sirius FM-5 Purchase Agreement dated May 31, 2006 between the Customer and the Satellite Manufacturer for the manufacture and sale of the Satellite, including without limitation all exhibits, schedules and attachments thereto.

"SECURITY AGREEMENT" means a Security Agreement between the Customer and the Lender dated as of even date herewith, substantially in the form attached hereto as <u>EXHIBIT C</u>.

"SECURITY DOCUMENTS" means, collectively, the Security Agreement and all Uniform Commercial Code financing statements or comparable instruments as may be required or desirable pursuant to the terms of applicable law, required by the Security Agreement to be filed with respect to the security interests in personal property and fixtures created pursuant to the Security Agreement and such other agreements and documents as shall be necessary to provide the Lender with valid, enforceable and perfected first priority security interests in the Collateral and in each case all amendments, modifications and supplements thereto.

"SENIOR INDEBTEDNESS" means with respect to any Person:

- (1) Indebtedness of such Person, whether outstanding on the Issue Date or thereafter Incurred; and
- (2) all other obligations of such Person (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to such Person whether or not post-filing interest is allowed in such proceeding) in respect of Indebtedness described in clause (1) above, unless, in the case of clauses (1) and (2), in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such Indebtedness or other obligations are subordinate in right of payment to the Loans; PROVIDED, HOWEVER, that Senior Indebtedness shall not include:
  - (A) any obligation of such Person to the Customer or any Subsidiary;
  - (B) any liability for Federal, state, local or other taxes owed or owing by such Person;
  - (C) any accounts payable or other liability to trade creditors arising in the ordinary course of business;
  - (D) any Indebtedness or other obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other obligation of such Person;
  - (E) that portion of any Indebtedness which at the time of Incurrence is Incurred in violation of this Agreement; or
  - (F) any Capital Stock.
  - "SS/L" has the meaning assigned to such term in the Preamble.

"STANDARD & POOR'S" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"STATED MATURITY" means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

"SUBORDINATED OBLIGATION" means, with respect to a Person, any Indebtedness of such Person (whether outstanding on the date hereof or thereafter Incurred) which is subordinate or junior in right of payment to the Loans pursuant to a written agreement to that effect.

"SUBSIDIARY" means, with respect to any Person (the "PARENT") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise specified, "Subsidiary" means a Subsidiary of the Customer.

"SUBSIDIARY GUARANTEE" has the meaning assigned to such term in Section 8.01.

"SUBSIDIARY GUARANTOR" has the meaning assigned to such term in Section 8.01.

"SUBSTITUTE BASIS" has the meaning given to such term in Section 2.08(a).

"TAXES" means any and all present or future taxes, fees, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"TRANSACTIONS" means the execution, delivery and performance by the Customer of this Agreement and by the Customer and the Subsidiary Guarantors of the other Loan Documents to which they are a party, the borrowing of the Loan and the use of the proceeds thereof.

"UNIFORM COMMERCIAL CODE" means the New York Uniform Commercial Code and the Uniform Commercial Code of each other state as may be applicable, in the judgment of the Lender, for the purpose of creating, maintaining and perfecting its first priority security interest in the Collateral, in each case as in effect from time to time.

"UNUSED COMMITMENT" means, as of any date of calculation, the amount by which the Commitment in effect at the time exceeds the aggregate principal amount of all Loans; PROVIDED, HOWEVER, that the Commitment shall be permanently reduced at the time of and

by the amount of each Milestone Payment required to be made subsequent to December 31, 2007 regardless of whether a Loan has been made with respect thereto.

### "UNRESTRICTED SUBSIDIARY" means:

- (1) any Subsidiary of the Customer that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors in the manner provided below; and
  - (2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors may designate any Subsidiary of the Customer (including any newly acquired or newly formed Subsidiary but excluding any direct or indirect Subsidiary that holds the License or any other Material FCC license or other Material Government Approval) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Capital Stock or Indebtedness of, or holds any Lien on any property of, the Customer or any other Subsidiary of the Customer that is not a Subsidiary of the Subsidiary to be so designated; PROVIDED, HOWEVER, that either (A) the Subsidiary to be so designated has total assets of \$1,000 or less or (B) if such Subsidiary has assets greater than \$1,000, such designation would be permitted under Section 6.03.

The Board of Directors may designate any Unrestricted Subsidiary to be a Subsidiary Guarantor; PROVIDED, HOWEVER, that immediately after giving effect to such designation (A) the Customer could Incur \$1.00 of additional Indebtedness under Section 6.02(a) and (B) no Default or Event of Default shall have occurred and be continuing. Any such designation by the Board of Directors shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing provisions.

"VOTING STOCK" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"WHOLLY OWNED SUBSIDIARY" means a Subsidiary Guarantor all the Capital Stock of which (other than directors' qualifying shares) is owned by the Customer or one or more other Wholly Owned Subsidiaries.

"WITHDRAWAL LIABILITY" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. TERMS GENERALLY. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation, (b) any reference herein to any Person shall be construed to include such Person's permitted successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) unless otherwise expressly provided herein, any reference to any action of the Lender by way of consent, approval or waiver shall be deemed modified by the phrase "in its/their sole discretion".

SECTION 1.03. ACCOUNTING TERMS; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP; PROVIDED that, if the Customer notifies the Lender that the Customer requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender notifies the Customer that the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

#### ARTICLE II.

#### LOAN PROVISIONS

### SECTION 2.01. THE COMMITMENT.

(a) THE LOANS. The Lender agrees, subject to the terms hereof, and satisfaction of the conditions precedent contained herein, to make extensions of credit to the Customer (each such extension of credit, a "LOAN") upon the request of the Customer in accordance with Section 2.03, (i) on a Milestone Payment Date in order for the Customer to make the related Milestone Payment to the Satellite Manufacturer as provided below and (ii) during the period on or prior to December 31, 2007, from time to time but in no event more frequently than once per month in order for the Customer to reimburse itself for Milestone Payments previously made by the Customer (other than with Loan proceeds or for which reimbursement has previously been made to the Customer pursuant to this Section 2.01), PROVIDED that no Loan shall exceed the Maximum Amount, and PROVIDED, FURTHER, that each Loan shall be in an amount at least equal to the full Milestone Payment (or, if less than

the full Milestone Payment, \$500,000 and whole number multiples of \$100,000 in excess thereof) or, if the Customer is seeking reimbursement, \$1,000,000 and whole number multiples of \$100,000 in excess thereof. The Lender is authorized to make Loans under this Agreement based on written instructions received from a Responsible Officer of the Customer and the Customer shall indemnify and hold the Lender harmless for any damages or losses suffered by the Lender as a result of reliance on such instructions. The Lender shall disburse funds to the Customer by wiring the amount of each Loan made under this Section 2.01 to the Customer's Deposit Account or in such other manner and otherwise in accordance with the Customer's instructions; PROVIDED, HOWEVER, that if at any time the Customer shall indicate in a Notice of Borrowing that all or any portion of a Loan is to be applied to make a Milestone Payment to the Satellite Manufacturer and at such time SS/L shall be the sole Lender, the Lender shall be deemed to have made such Loan (or the applicable portion thereof) upon confirmation from the Satellite Manufacturer that the proceeds of such Loan (or the applicable portion thereof) shall have been credited against the applicable Milestone Payment under the Satellite Purchase Agreement and, accordingly, the Lender shall not be obligated to wire funds to the Customer's Deposit Account to reflect the disbursement of such Loan (or the applicable portion thereof). If at the time of delivery by the Customer of a Notice of Borrowing SS/L is not the sole lender, each Lender other than SS/L shall disburse its pro rata portion of the Loan proceeds to the Customer's Deposit Account or in such other manner and otherwise in accordance with the Customer's instructions. Under no circumstances shall the Lender be obligated to make any Loan if, after making such Loan, the aggregate principal amount of the Loans would exceed the Commitment then in effect. Amounts prepaid or repaid in respect of the Loans may not be reborrowed.

(b) PURPOSE. The Customer shall, subject to the terms and conditions hereof, use each Loan solely to pay the applicable Milestone Payment owed to the Satellite Manufacturer pursuant to the Satellite Purchase Agreement or, on or before December 31, 2007, to reimburse itself for one or more Milestone Payments the Customer shall have made to the Satellite Manufacturer (other than with Loan proceeds or for which reimbursement has previously been made to the Customer pursuant to Section 2.01(a)) on or prior to the date such Loan is made.

SECTION 2.02. SECURITY. All obligations of the Customer under this Agreement and the other Loan Documents shall be secured by the Collateral as set forth in the Security Documents from and after the date of execution thereof, as provided below, subject to the condition that if the Loans (together with accrued and unpaid interest thereon, fees and all other amounts due and payable under the Loan Documents) to be so secured shall be repaid in full and the Commitment shall have terminated or expired, the Lender shall release the Collateral from the security interest created therein. The Customer shall enter into on or before the Effective Date the Security Documents, including the Security Agreement, granting to the Lender a valid Lien in or on all Collateral, which Lien shall be subject to no prior Liens, shall be perfected at all times on and after the Effective Date and shall be otherwise in accordance with the terms hereof, and as a condition to the Effective Date the Lender shall be satisfied by receipt of legal opinions or other evidence that such grant is not void or subject to avoidance if the Customer becomes the subject of an insolvency proceeding.

SECTION 2.03. REQUEST FOR A LOAN. To request a Loan, the Customer shall notify the Lender of such request by delivery of a Notice of Borrowing, in substantially the form of Exhibit A or otherwise in a form reasonably acceptable to the Lender and signed by the Customer, not later than 10 Business Days before the date of the proposed Loan.

### SECTION 2.04. RECORDS; PROMISSORY NOTES.

- (a) MANNER OF PAYMENT. Any partial prepayment or repayment of the Loans shall be applied in the order of the remaining duration of their respective Interest Periods (the Loan with the shortest remaining Interest Period to be repaid first).
- (b) MAINTENANCE OF RECORDS BY THE LENDER. The Lender shall maintain in accordance with its usual practice records evidencing the indebtedness of the Customer to the Lender resulting from the Loans in which it shall record (i) the amount of any principal or interest due and payable or to become due and payable from the Customer hereunder and (ii) the amount of any sum received by the Lender hereunder.
- (c) EFFECT OF ENTRIES. The entries made in the records maintained pursuant to paragraph (b) of this Section shall be PRIMA FACIE evidence of the existence and amounts of the obligations recorded therein; PROVIDED that the failure of the Lender to maintain such records or any error therein shall not in any manner affect the obligation of the Customer to repay the Loans in accordance with the terms of this Agreement.
- (d) PROMISSORY NOTES. The Lender may request that a Loan be evidenced by a promissory note. In such event, the Customer shall prepare, execute and deliver to the Lender a promissory note payable to the Lender and in a form approved by the Lender. Thereafter, the Loan evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by a promissory note in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).
- SECTION 2.05. REPAYMENT OF THE LOANS. The Customer hereby unconditionally promises to pay to the Lender the unpaid principal amount of the Loans, together with accrued and unpaid interest thereon, on the Maturity Date.

### SECTION 2.06. PREPAYMENT OF THE LOANS.

- (a) OPTIONAL PREPAYMENTS. The Customer may, upon three Business Days prior written notice to the Lender prepay Loans, in whole or in part, in amounts of at least \$5,000,000 or any whole number multiple of \$1,000,000 in excess thereof; PROVIDED that such prepayment shall be accompanied by (i) interest on the amount of such prepayment, accrued to the date of prepayment and (ii) all accrued and unpaid fees, if any, and all other amounts due and payable under this Agreement and the other Loan Documents in respect of such Loans. Loans (or portions thereof) prepaid in accordance with this Section 2.06(a) may not be reborrowed.
- (b) MANDATORY PREPAYMENTS. The Commitment shall terminate immediately and the Customer shall prepay all Loans in full, together with (i) interest thereon

accrued to the date of prepayment and (ii) all fees and other amounts due and payable under this Agreement and the other Loan Documents, within 10 Business Days after the occurrence of any of the following events:

- (1) notwithstanding the provisions of Sections 6.01 and 6.02, the execution after the date hereof and prior to the Maturity Date by the Customer or any of its Affiliates of a contract for the construction, purchase or lease of a satellite (but excluding leases of non-S-band capacity, PROVIDED that if any such leases are of a New Satellite, such leases do not constitute more than 25% of the transponder capacity on such satellite) with any Person other than SS/L, or the launch by the Customer or any of its Affiliates of a satellite manufactured by a Person other than SS/L, unless such contract exists on the date hereof and is disclosed to the Lender on Schedule I;
- (2) the Customer's failure to obtain the License by May 31, 2007 or, if earlier, the dismissal or denial of the Customer's application for the License;
- (3) termination of the Satellite Purchase Agreement, including a partial termination by the Customer that includes the cancellation of the manufacture of the Satellite; and
  - (4) a Change of Control.

The Loans prepaid in accordance with this Section 2.06(b) may not be reborrowed.

(c) NOTICES, ETC. The Customer shall notify the Lender by telephone (confirmed by telecopy) of any prepayment hereunder not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of the Loans or the portion thereof to be prepaid and a reasonably detailed calculation of the amount of such prepayment. Each partial prepayment of the Loans shall be in an amount that would be permitted as provided in Section 2.06(a), except as necessary to apply fully the required amount of a mandatory prepayment. Prepayments shall be accompanied by the applicable unpaid fees and all other amounts owing under this Agreement and the other Loan Documents and accrued interest to the extent required by Section 2.07 and shall be made in the manner specified in Section 2.04(a).

### SECTION 2.07. INTEREST.

- (a) RATE. The Loans shall bear interest on the unpaid principal amount thereof during each Interest Period therefor at a rate per annum equal to the Adjusted LIBOR Rate for such Interest Period PLUS 4.75%.
- (b) DEFAULT INTEREST. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Customer hereunder is not paid when due, whether at stated maturity, upon acceleration, by mandatory prepayment or otherwise, such overdue amount and the unpaid principal amount of each Loan, plus accrued and unpaid interest thereon, shall bear interest, after as well as before judgment, to the extent

permitted by law, at a rate per annum equal to 2% PLUS the rate otherwise applicable to such Loan as provided above (the "POST-DEFAULT RATE").

### (c) PAYMENT OF INTEREST.

- (i) Interest on each Loan shall accrue and be payable quarterly in arrears on the last day of each Interest Period through the Maturity Date. Interest shall also be payable on the Maturity Date and on the date of any prepayment of the Loans pursuant to Section 2.06 for the portion of the Loans so prepaid, as the case may be, and upon payment (including prepayment) in full thereof and, during the existence of an Event of Default, interest shall be payable on demand of the Lender.
- (ii) Anything herein to the contrary notwithstanding, the obligations of the Customer to the Lender hereunder shall be subject to the limitation that payments of interest shall not be required for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the Lender would be contrary to the provisions of any law applicable to the Lender limiting the highest rate of interest that may be lawfully contracted for, charged or received by the Lender, and in such event the Customer shall pay the Lender interest at the highest rate permitted by applicable law.
- (d) COMPUTATION. All interest hereunder shall be computed on the basis of a year of 360 days, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Within 10 days after the first day of each Interest Period in respect of a Loan, the Lender shall give the Customer written notice of the Adjusted LIBOR Rate applicable to such Interest Period. Each determination by the Lender of the applicable Adjusted LIBOR Rate shall be conclusive and binding on the Customer absent manifest error.
- SECTION 2.08. ALTERNATE RATE OF INTEREST. If prior to the commencement of any Interest Period or Default Interest Period for a Loan the Lender determines (which determination shall be conclusive and binding on the Customer absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate for such Interest Period or Default Interest Period then the Lender shall give notice thereof to the Customer by telephone or telecopy as promptly as practicable thereafter and:
- (a) during the 15-day period next succeeding the date of any such notice (the "NEGOTIATION PERIOD"), the Lender and the Customer will negotiate in good faith for the purpose of agreeing upon an alternative, mutually acceptable basis (the "SUBSTITUTE BASIS") for determining the rate of interest to be applicable to such Loan for such Interest Period or Default Interest Period, as the case may be;
- (b) if at the expiry of the Negotiation Period, the Lender and the Customer have agreed upon a Substitute Basis, such Substitute Basis shall be retroactive to, and take effect from, the beginning of such Interest Period or Default Interest Period, as the case may be;
- (c) if at the expiry of the Negotiation Period, a Substitute Basis shall not have been agreed upon as aforesaid the Lender shall notify the Customer of the cost to the Lender (as determined by it in good faith) of funding and maintaining such Loan for such Interest Period or

such Default Interest Period; and the interest payable to the Lender on such Loan for such Interest Period or Default Interest Period shall be a rate per annum equal to 4.75% above the cost to such Lender of funding and maintaining such Loan for such Interest Period or Default Interest Period as so notified by such Lender (or, if a Default Interest Period is in effect, as to any principal of such Loan or, to the extent permitted by applicable law, other amount payable to such Lender on or in respect of such Loan, at a rate per annum equal to 6.75% plus such cost to the Lender); and

(d) the procedures specified in clauses (a), (b) and (c) above shall apply to each Interest Period or Default Interest Period for the Loans succeeding the first Interest Period or Default Interest Period to which they were applied unless and until the Lender shall determine that the condition referred to in the lead-in clause of this Section 2.08 no longer exists and so notifies the Customer, whereupon interest on the Loans shall again be determined in accordance with the provisions of Section 2.07 commencing on the first day of the Interest Period (being March 31, June 30, September 30 or December 31, as applicable) or Default Interest Period for the Loans next succeeding the date of such notice.

## SECTION 2.09. TAXES.

- (a) PAYMENTS FREE OF TAXES. Any and all payments by or on account of any obligation of the Customer hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; PROVIDED that if the Customer shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Customer shall make such deductions and (iii) the Customer shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.
- (b) PAYMENT OF OTHER TAXES BY THE CUSTOMER. In addition, the Customer shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
- (c) INDEMNIFICATION BY THE CUSTOMER. The Customer shall indemnify the Lender, within 10 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Customer by the Lender shall be conclusive absent manifest error.
- (d) EVIDENCE OF PAYMENTS. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Customer to a Governmental Authority, the Customer shall deliver to the Lender the original or a certified copy of a receipt issued by such

Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

- (e) TAXATION OF LENDER. Notwithstanding any provision of this Agreement to the contrary, the Lender shall be either (a) a United States person under Section 7701(a)(30) of the Code for United States federal income purposes and shall deliver to the Customer, at the time or times prescribed by applicable law or reasonably requested by the Customer, a properly completed and executed Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto), or (b) entitled to an exemption from withholding tax under the laws of the United States of America, or any treaty to which the United States of America is a party, with respect to payments under any Loan Documents and shall deliver to the Customer, at the time or times prescribed by applicable law or reasonably requested by the Customer, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding.
- (f) REFUNDS. If the Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Customer or with respect to which the Customer has paid additional amounts pursuant to this Section 2.09, it shall pay over such refund to the Customer (but only to the extent of indemnity payments made, or additional amounts paid, by the Customer under this Section 2.09 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); PROVIDED, that the Customer, upon the request of such Lender, agrees to repay the amount paid over to the Customer (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Lender in the event such Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Customer or any other Person.

## SECTION 2.10. PAYMENTS GENERALLY.

(a) PAYMENTS BY THE CUSTOMER. The Customer shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or under Section 2.09, or otherwise) or under any other Loan Document (except to the extent otherwise provided therein) prior to 11:00 a.m., New York City time, on the date when due, in immediately available funds, without set-off, recoupment or counterclaim (it being understood and agreed that the Customer shall not at any time offset amounts owed to it by the Satellite Manufacturer under the Satellite Purchase Agreement against amounts due and owing to the Lender hereunder or under the other Loan Documents). Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender by wire transfer to:

Bank of America, N.A. ABA: 0260-0959-3

Account Number: 8188802626

Account Name: Space Systems/Loral, Inc.

Reference: Sirius Satellite FM-5

or at such other location as the Lender may specify by prior written notice to the Customer, except as otherwise expressly provided in the relevant Loan Document. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder or under any other Loan Document shall be made in Dollars.

(b) APPLICATION OF INSUFFICIENT PAYMENTS. If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, interest and fees then due hereunder and under the other Loan Documents, such funds shall be applied (i) first, to pay interest and fees then due and (ii) second, to pay principal then due.

SECTION 2.11. MITIGATION OBLIGATIONS. If the Customer is required to pay any additional amount to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.09, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.09 in the future and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Customer hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

# ARTICLE III.

## REPRESENTATIONS AND WARRANTIES

The Customer represents and warrants to the Lender that:

SECTION 3.01. ORGANIZATION; POWERS. The Customer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required except where the failure to be so qualified or to be in good standing could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.02. AUTHORIZATION; ENFORCEABILITY. The Transactions are within the Customer's organizational powers and have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by the Customer and constitutes, and each of the Security Documents when executed and delivered will constitute, a legal, valid and binding agreement of the Customer, and each Note when executed and delivered will constitute the legal, valid and binding obligation of the Customer, in each case, enforceable

in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 3.03. COMPLIANCE WITH LAWS AND AGREEMENTS. The Customer is in compliance in all respects with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.04. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$100,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$100,000 the fair market value of the assets of all such underfunded Plans.

# SECTION 3.05. LITIGATION, ENVIRONMENTAL AND OTHER MATTERS.

- (a) ACTIONS, SUITS AND PROCEEDINGS. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of the Customer, threatened against or affecting the Customer or its Subsidiaries or any of their respective properties (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement, any other Loan Document or the Transactions. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document, or directing that the Transactions not be consummated as herein or therein provided.
- (b) ENVIRONMENTAL MATTERS. Except with respect to any matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, the Customer (i) has not failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has not become subject to any Environmental Liability, (iii) has not received notice of any claim with respect to any Environmental Liability or (iv) does not know of any basis for any Environmental Liability.
- (c) DISCLOSED MATTERS. Since December 31, 2005, there has been no event or condition which has had or is reasonably likely to have a Material Adverse Effect.

SECTION 3.06. COLLATERAL. All representations of the Customer contained in the Security Documents executed on the date hereof are true and correct.

SECTION 3.07. SECURITY DOCUMENTS. From and after the Effective Date, the Security Documents shall create in favor of the Lender legal, valid and enforceable Liens on or in all of the Collateral and shall constitute at all times a perfected Lien on or in all right, title, estate and interest of the Customer in the Collateral covered thereby having the perfection and priority required by Section 2.02, and all necessary and appropriate consents to such creation and perfection of such Liens of each of the parties to the Security Documents have been obtained on or before the date of execution of the Security Documents.

SECTION 3.08. TAXES. The Customer has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Person has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.09. USE OF PROCEEDS. The proceeds of the Loan are being used solely for the purposes set forth in Section 5.09.

SECTION 3.10. SATELLITE PURCHASE AGREEMENT. The Satellite Purchase Agreement is in full force and effect and the Customer is not in default in the performance of any of its covenants or obligations set out therein.

SECTION 3.11. GOVERNMENTAL APPROVALS; NO CONFLICTS. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except for (i) such as have been obtained or made and are in full force and effect or will be obtained in the ordinary course of business before the time required under applicable laws and regulations and (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents, (b) will not violate any applicable law or regulation or the organizational documents of the Customer or any Subsidiary Guarantor or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Customer or any Subsidiary Guarantor or their respective assets, or give rise to a right thereunder to require any payment to be made by any such Person, and (d) except for the Liens created pursuant to the Security Documents, will not result in the creation or imposition of any Lien on any asset of the Customer or any Subsidiary Guarantor.

SECTION 3.12. NO DEFAULT. No Default or Event of Default exists or would result from the incurring of any obligations by the Customer or any Subsidiary Guarantor under any Loan Document or from the grant or perfection of the Liens of the Lender or its agent, if any, as the case may be, on the Collateral.

SECTION 3.13. SUBSIDIARIES. Set forth in <u>Schedule II</u> is a list of all Material Subsidiaries of the Customer.

SECTION 3.14. LICENSE. The License is all the authorization necessary from all applicable Governmental Authorities for the Customer to operate the Satellite as part of its S-band system in the United States, and no Person has priority rights in accordance with the regulations of the International Telecommunications Union with respect thereto, or has, to the knowledge of Customer, asserted that it has rights to operate a spacecraft in a manner that would result in interference to the operation of the Satellite in its intended orbital position.

### ARTICLE IV.

### **CONDITIONS**

SECTION 4.01. EFFECTIVE DATE. The obligation of the Lender to make the Loans hereunder shall not become effective until the date on which the Lender shall have received each of the following documents, each of which shall be satisfactory to the Lender in form and substance (or such condition shall have been waived in accordance with Section 9.02) and each of the conditions in Section 4.02 have been satisfied (or waived in accordance with Section 9.02):

- (a) CUSTOMER CREDIT AGREEMENT. From the Customer, a counterpart of this Agreement signed on behalf of the Customer.
- (b) SATELLITE PURCHASE AGREEMENT. From the Customer, a duly executed counterpart of the Satellite Purchase Agreement, dated as of even date herewith.
  - (c) SUBSIDIARY GUARANTEE. From the Material Subsidiaries of the Customer, a duly executed Subsidiary Guarantee.
- (d) SECURITY AGREEMENT. From the Customer, a duly executed counterpart of the Security Agreement and duly executed copies of any filings required to be made in accordance with the terms thereof or such other evidence satisfactory to the Lender that such filings shall have been duly made in the appropriate filing offices to perfect the security interests contemplated thereby in accordance with the priority contemplated in Section 2.02.
- (e) OPINION OF COUNSEL. One or more opinions, each dated the Effective Date and addressed to the Lender, of counsel (including Delaware counsel) to the Customer and the Subsidiary Guarantors covering the matters set forth in <a href="EXHIBIT B">EXHIBIT B</a> and such other matters as the Lender may reasonably request.
  - (f) ORGANIZATIONAL DOCUMENTS. Certified copies of
  - (i) the certificate of incorporation or other organizational documents and by-laws of the Customer and each Subsidiary Guarantor,
    - (ii) good standing certificates, and
  - (iii) evidence of all corporate authority for the Customer and each Subsidiary Guarantor (including all necessary action of the board of directors or

shareholders) with respect to the execution, delivery and performance of each Loan Document to which the Customer or such Subsidiary Guarantor is intended to be a party.

- (g) OFFICER'S CERTIFICATE. Certificates, dated the Effective Date and signed by a Responsible Officer of the Customer and each Subsidiary Guarantor, where applicable, confirming the following:
  - (i) from the Customer, that no Default or Event of Default has occurred and is continuing;
  - (ii) from the Customer, that each of the representations and warranties of the Customer set out in Article III is true and correct and each of the conditions specified in Section 4.02(a), (b), (d), and (e) have been fulfilled, and from the Subsidiary Guarantors, that each of the representations and warranties of such Guarantors set out in the Subsidiary Guarantees is true and correct; and
  - (iii) from the Customer and the Subsidiary Guarantors, a certificate of the Secretary of such Person certifying the names and true signatures of such Person authorized to execute, deliver and perform, as applicable, this Agreement and all other Loan Documents to be delivered hereunder and to which such Person is a party.
- SECTION 4.02. ADDITIONAL CONDITIONS TO EFFECTIVE DATE AND EACH LOAN. The obligation of the Lender to make each Loan hereunder is subject to satisfaction (or waiver in accordance with Section 9.02) of the following additional conditions on such borrowing date:
- (a) NO MATERIAL ADVERSE CHANGE. There shall not have occurred a material adverse change in (a) the business, assets, operations or condition of the Customer and its Subsidiaries taken as a whole, (b) the rights of the Customer in respect of the License after the License has been acquired, (c) the ability of the Customer to perform its payment obligations under this Agreement or the Security Documents or of the Subsidiary Guarantors to perform their obligations under the Subsidiary Guarantees, (d) the value of the Collateral or the validity, enforceability or priority of the Liens contemplated under the Security Documents, or (e) the ability of the Lender to exercise any of its rights and/or remedies available under this Agreement or any of the other Loan Documents. For the avoidance of doubt, if either the Customer or any Subsidiary Guarantor shall have defaulted in the performance of or compliance with any term of any Material Indebtedness (other than an immaterial term) beyond any applicable grace period and such default shall remain unremedied (it being understood that a waiver of such default shall not be deemed a remedy thereof for the purpose of this Section 4.02(a)) on such borrowing date, a material adverse change in the business of the Customer and its Subsidiaries taken as a whole shall be deemed to have occurred.
- (b) NO DEFAULT OR EVENT OF DEFAULT; NO FUTURE ADVANCE NOTICE. No Default or Event of Default shall have occurred and be continuing. The Lender shall not have received from the Customer any notice that any Security Document will no longer secure on a first priority basis future Loans to be made under this Agreement.

- (c) REPRESENTATIONS AND WARRANTIES. Each of the representations and warranties of the Customer set out in Article III and of the Subsidiary Guaranters under the Subsidiary Guarantees shall be true and correct.
- (d) LIQUID ASSETS. The Customer shall own free and clear of all Liens of, and restrictions imposed by, third parties cash and Cash Equivalents having a fair market value which, when added to the amount of committed financing (other than vendor financing or financing under this Agreement) immediately available to the Customer on such borrowing date, is at least equal to \$100,000,000.
- (e) PUBLICLY TRADED STOCK; MARKET CAPITALIZATION. The common stock of the Customer shall be listed on a U.S. national securities exchange or on NASDAQ and the Customer shall have a Public Market Equity Value of at least \$1,000,000,000.
  - (f) NOTICE OF BORROWING. The Notice of Borrowing shall have been delivered by the Customer.

SECTION 4.03. TERMINATION/EXPIRATION OF THE COMMITMENT. The Commitment shall terminate upon the earliest to occur of the following: (i) the completion of the Milestone entitled "Available for Shipment" (as described in Exhibit F to the Satellite Purchase Agreement), (ii) the occurrence of any of the events set forth in Section 2.06(b), (iii) the date on which the aggregate principal amount of the Loans shall equal the Commitment then in effect and (iv) termination in accordance with Section 7.01.

## ARTICLE V.

## AFFIRMATIVE COVENANTS

Until the Commitment has expired or terminated and the principal of and interest on the Loans and all fees payable hereunder and all other amounts payable under the Loan Documents shall have been paid in full, the Customer covenants and agrees with the Lender that:

## SECTION 5.01. FINANCIAL STATEMENTS AND OTHER INFORMATION. The Customer will furnish to the Lender:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the Customer, consolidated and consolidating statements of income, retained earnings and cash flows of the Customer and its consolidated Subsidiaries for such fiscal year and the related consolidated and consolidating balance sheets of the Customer and its consolidated Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form the corresponding consolidated and consolidating figures for the preceding fiscal year, and accompanied (i) in the case of said consolidated statements and balance sheets of the Customer, by an opinion thereon of independent certified public accountants of recognized national standing reasonably acceptable to the Lender, which opinion shall be without a "going concern" or like qualification or exception or qualification arising out of the scope of the audit and shall state that said consolidated financial statements present fairly in all material respects

the consolidated financial condition and results of operations of the Customer and its consolidated Subsidiaries as at the end of, and for, such fiscal year in accordance with GAAP, and (ii) in the case of said consolidating financial statements and balance sheets, by a certificate of the chief financial officer of the Customer, which certificate shall state that said consolidating financial statements fairly present the respective individual unconsolidated financial condition and results of operations of the Customer and of each of its consolidated Subsidiaries, in each case in accordance with GAAP, consistently applied, as at the end of, and for, such fiscal year, PROVIDED that delivery through electronic media within the time period specified above of a copy of the Customer's Annual Report on Form 10-K prepared in compliance with requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 5.01(a);

- (b) as soon as available and in any event within 45 days after the end of each quarterly fiscal period of each fiscal year of the Customer, consolidated and consolidating statements of income, retained earnings and cash flows of the Customer and its consolidated Subsidiaries for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related consolidated and consolidating balance sheets of the Customer and its consolidated Subsidiaries as at the end of such period, setting forth in each case in comparative form the corresponding consolidated and consolidating figures for the corresponding periods in the preceding fiscal year, accompanied by a certificate of the chief financial officer of the Customer, which certificate shall state that said financial statements present fairly the consolidated financial condition and results of operations of the Customer and its consolidated Subsidiaries, and said consolidating financial statements present fairly in all material respects the respective individual unconsolidated financial condition and results of operations of the Customer and of each of its consolidated Subsidiaries, in each case in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments), PROVIDED that delivery through electronic media within the time period specified above of a copy of the Customer's Quarterly Report on Form 10-Q prepared in compliance with requirements therefor and filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 5.01(b);
- (c) concurrently with any delivery of financial statements under clause (a) or (b) of this Section, a certificate of a Responsible Officer of the Customer (i) certifying as to whether a Default or Event of Default has occurred and, if a Default or Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements previously delivered and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate and (iii) certifying that the Public Market Equity Value of the Customer has met or exceeded the requirement set forth in Section 5.10(b) on each Business Day of such fiscal year or quarterly fiscal period; and
- (d) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Customer, or compliance with the terms of this Agreement and the other Loan Documents, as the Lender may reasonably request.

SECTION 5.02. NOTICES OF MATERIAL EVENTS. The Customer will furnish to the Lender prompt written notice of the following:

- (a) the occurrence of any Default or Event of Default;
- (b) any construction, purchase or lease (but excluding leases of non-S-band capacity, PROVIDED that if any such leases are of a New Satellite, such leases do not constitute more than 25% of the transponder capacity on such satellite) by the Customer or any of its Affiliates of a satellite manufactured by any Person other than SS/L, or any launch by the Customer or any of its Affiliates of a satellite manufactured by a Person other than SS/L, unless such contract or launch was disclosed to the Lender on Schedule I;
  - (c) the acquisition or formation of additional Material Subsidiaries;
  - (d) a Change of Control;
  - (e) the dismissal or denial of the Customer's application for the License or the granting of the License; and
  - (f) any other development that results in a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer of the Customer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. EXISTENCE; CONDUCT OF BUSINESS. The Customer will do or cause to be done all things necessary to preserve, renew and keep in full force and effect (a) its legal existence and the legal existence of each Subsidiary Guarantor and (b) the rights, licenses, permits, privileges and franchises material to the conduct of their respective businesses except in the case of clause (b) hereof to the extent that the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.04. BOOKS AND RECORDS; INSPECTION RIGHTS. The Customer will, and will cause each Subsidiary Guarantor to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Customer will, and will cause each Subsidiary Guarantor to, permit any representatives designated by the Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested. Without limiting the generality of the foregoing sentence, the Customer will, and will cause each Subsidiary Guarantor to, provide access to representatives designated by the Lender for the purposes of reviewing licenses, approvals and authorizations where such access is applicable and available under applicable laws and regulations.

SECTION 5.05. MAINTENANCE OF PROPERTIES. The Customer will, and will cause each Subsidiary Guarantor to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except to

the extent that the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.06. COMPLIANCE WITH LAWS. The Customer will, and will cause each Subsidiary Guarantor to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.07. PAYMENT OF OBLIGATIONS. The Customer will, and will cause each Subsidiary Guarantor to, pay all its other obligations, including tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Customer or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

### SECTION 5.08. FURTHER ASSURANCES.

- (a) At any time or from time to time, the Customer will, and will cause the Subsidiary Guarantor, to execute, acknowledge and deliver such further documents as the Lender may reasonably request to effect fully the purposes of this Agreement.
- (b) The Customer shall ensure that all written information, exhibits and reports furnished to the Lender (other than projections which have been and shall be provided in good faith and based on reasonable assumptions but shall not be viewed as facts), taken as a whole, do not and will not contain any untrue statement by the Customer or any Affiliate thereof of a material fact and do not and will not omit, on the part of the Customer or any such Affiliate, to state any material fact or any fact necessary to make the statements contained therein not misleading in light of the circumstances in which made, and the Customer will promptly disclose to the Lender and correct any defect or error that may be discovered therein by the Customer or any Affiliate or in any of the Loan Documents, including the Security Documents, or in the execution, acknowledgment or recordation thereof.
- (c) The Customer shall as of and at all times after the date of execution of the Security Documents take or cause to be taken all action reasonably requested by the Lender to maintain and preserve the Liens of the Security Documents and the perfection and priority thereof required by the terms of this Agreement.

SECTION 5.09. USE OF PROCEEDS. Subject to the terms and conditions hereof, the proceeds of each Loan will be used solely to pay Milestone Payments owed by the Customer pursuant to the Satellite Purchase Agreement or to reimburse the Customer for payment of the same. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations U and X.

SECTION 5.10. MAINTENANCE OF APPROVALS. The Customer will maintain, and cause each Subsidiary Guarantor to maintain, all broadcast licenses, satellite

concessions and governmental and third-party consents and approvals necessary to its business as currently conducted or as proposed to be conducted in its business plan, except to the extent that the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

### ARTICLE VI.

### NEGATIVE COVENANTS

Until the Commitment has expired or terminated and the principal of and interest on the Loans and all fees payable hereunder and all other amounts payable under the Loan Documents have been paid in full, the Customer covenants and agrees with the Lender that:

### SECTION 6.01. LIENS.

- (a) The Customer will not create, incur, assume or permit to exist any Lien on the Collateral, except:
  - (i) Liens created pursuant to the Security Documents; and
  - (ii) Collateral Permitted Liens.
- (b) The Customer shall not, and shall not permit any Subsidiary Guarantor to, directly or indirectly Incur or permit to exist any Lien (the "Initial Lien") of any nature whatsoever on any of its properties (including the Capital Stock of a Subsidiary Guarantor), whether owned at the date hereof or thereafter acquired, securing any Indebtedness, other than Permitted Liens, without effectively providing that the Loans shall be secured equally and ratably with (or prior to ) the obligations so secured for so long as such obligations are so secured. Any Lien created for the benefit of the Lender pursuant to the preceding sentence shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien.

### SECTION 6.02. LIMITATION ON INDEBTEDNESS.

- (a) The Customer shall not, and shall not permit any Subsidiary Guarantor to, Incur, directly or indirectly, any Indebtedness; PROVIDED, HOWEVER, that the Customer shall be entitled to Incur Indebtedness if, on the date of such Incurrence and after giving effect thereto on a pro forma basis, the Consolidated Leverage Ratio would be less than 6.00 to 1.
- (b) Notwithstanding the foregoing paragraph (a), the Customer and the Subsidiary Guarantors shall be entitled to Incur any or all of the following Indebtedness:
  - (1) Indebtedness incurred by the Customer or any of the Subsidiary Guarantors under this clause (1) that, after giving effect to any such Incurrence, does not exceed \$500 million at any time outstanding;

- (2) Indebtedness of the Customer in an aggregate principal amount which, when taken together with all other Indebtedness of the Customer Incurred pursuant to this clause (2) and then outstanding, does not exceed 175% of the Net Cash Proceeds received by the Customer since immediately after the Issue Date from the issue or sale of Capital Stock of the Customer or cash contributed to the capital of the Customer (in each case other than proceeds of Disqualified Stock or sales of Capital Stock to the Customer or any of its Subsidiaries); PROVIDED, HOWEVER, that any Net Cash Proceeds or cash contributions received by the Customer from the issue or sale of its Capital Stock and used to Incur Indebtedness pursuant to this clause (2) shall be excluded from the calculation of amounts under Section 6.03(a)(3)(B);
- (3) Indebtedness owed to and held by the Customer or a Subsidiary Guarantor; PROVIDED, HOWEVER, that (A) any subsequent issuance or transfer of any Capital Stock which results in any such Subsidiary Guarantor ceasing to be a Subsidiary Guarantor or any subsequent transfer of such Indebtedness (other than to the Customer or a Subsidiary Guarantor) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the obligor thereon and (B) if the Customer is the obligor on such Indebtedness, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations with respect to the Loans;
  - (4) the Loans;
  - (5) Indebtedness outstanding on the Effective Date;
- (6) Indebtedness of a Subsidiary Guarantor Incurred and outstanding on or prior to the date on which such Subsidiary was acquired by the Customer (other than Indebtedness Incurred in connection with, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Subsidiary became a Subsidiary or was acquired by the Customer); PROVIDED, HOWEVER, that on the date of such acquisition and after giving pro forma effect thereto, the Customer would have been entitled to Incur at least \$1.00 of additional Indebtedness pursuant to Section 6.02(a);
- (7) Refinancing Indebtedness in respect of Indebtedness Incurred pursuant to Section 6.02(a) or pursuant to clause (2), (4), (5) or (6) of this Section 6.02(b) or this clause (7); PROVIDED, HOWEVER, that to the extent such Refinancing Indebtedness directly or indirectly Refinances Indebtedness of a Subsidiary Incurred pursuant to clause (6), such Refinancing Indebtedness shall be Incurred only by such Subsidiary;
- (8) Hedging Obligations directly related to Indebtedness permitted to be Incurred by the Customer and the Subsidiary Guarantors pursuant to this Agreement;

- (9) Obligations in respect of workers' compensation claims, self-insurance obligations, performance, bid and surety bonds and completion guarantees provided by the Customer or any Subsidiary Guarantor in the ordinary course of business;
- (10) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; PROVIDED, HOWEVER, that such Indebtedness is extinguished within five Business Days of its Incurrence;
- (11) Subordinated Obligations Incurred by the Customer to finance the purchase, lease or improvement of property (real or personal) or equipment that is used or useful in a Related Business (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) within 180 days of such purchase, lease or improvement, and any Refinancing Indebtedness Incurred to Refinance such Indebtedness; PROVIDED, HOWEVER, that, except to the extent permitted by the following proviso, any Indebtedness Incurred under this clause (11) shall have a weighted Average Life that is greater than the then remaining weighted Average Life of the Loans and a final maturity date that is later than the date that is 91 days after the Maturity Date of the Loans; PROVIDED FURTHER, HOWEVER, that the Customer may Incur Permitted Subordinated Obligations pursuant to this clause (11) in an amount which, when added together with the amount of all other Permitted Subordinated Obligations Incurred pursuant to this clause (11) and then outstanding, does not exceed \$250 million;
- (12) Purchase Money Indebtedness, Attributable Debt in respect of Sale/Leaseback Transactions and Capital Lease Obligations of the Customer or any of the Subsidiary Guarantors, and Refinancing Indebtedness in respect thereof, in an aggregate principal amount not in excess of \$50 million at any time outstanding;
- (13) Indebtedness arising from agreements of the Customer or any of the Subsidiary Guarantors providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred or assumed in connection with the disposition of any business, assets or Capital Stock of a Subsidiary Guarantor, PROVIDED, HOWEVER, the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by the Customer and the Subsidiary Guarantors in connection with such disposition;
  - (14) Replacement Satellite Vendor Indebtedness; and
- (15) Indebtedness of the Customer or of any of the Subsidiary Guarantors in an aggregate principal amount which, when taken together with all other Indebtedness of the Customer and the Subsidiary Guarantors Incurred

pursuant to this clause (15) and then outstanding (other than Indebtedness permitted by clauses (1) through (14) of this Section 6.02(b) or Section 6.02(a)), does not exceed \$50 million;

- (c) Notwithstanding the foregoing, the Customer shall not be entitled to Incur any Indebtedness pursuant to Section 6.02(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations of the Customer unless such Indebtedness shall be subordinated to the Loans to at least the same extent as such Subordinated Obligations.
  - (d) For purposes of determining compliance with this Section 6.02:
  - (1) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the types of Indebtedness described herein, the Customer, in its sole discretion, shall classify such item of Indebtedness (or any portion thereof) at the time of Incurrence and shall only be required to include the amount and type of such Indebtedness in one of the above clauses;
  - (2) the Customer shall be entitled to divide and classify (and later reclassify) an item of Indebtedness in more than one of the types of Indebtedness described above;
  - (3) any Indebtedness Incurred under clause (1), (2), (12) or (15) of Section 6.02(b) shall cease to be deemed Incurred or outstanding for purposes of those clauses, respectively, but instead shall be deemed to be Incurred for purposes of Section 6.02(a) from and after the first date on which the Customer could have Incurred such Indebtedness under Section 6.02(a) without reliance on any of such clauses;
  - (4) Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included; and

the principal amount of any Disqualified Stock of the Customer or Preferred Stock of a Subsidiary Guarantor, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof.

### SECTION 6.03. LIMITATION ON RESTRICTED PAYMENTS.

- (a) The Customer shall not, and shall not permit any Subsidiary Guarantor, directly or indirectly, to make a Restricted Payment if at the time the Customer or such Subsidiary Guarantor makes such Restricted Payment:
  - (1) an Event of Default shall have occurred and be continuing (or would result therefrom);

- (2) the Customer is not entitled to Incur an additional \$1.00 of Indebtedness under Section 6.02(a) after giving effect, on a pro forma basis, to such Restricted Payment; or
- (3) the aggregate amount of such Restricted Payment and all other Restricted Payments since the Issue Date would exceed the sum of (without duplication):
  - (A) 100% of Consolidated Operating Cash Flow accrued during the period (treated as one accounting period) from the beginning of the first fiscal quarter during which the Customer generates positive Consolidated Operating Cash Flow to the end of the most recent fiscal quarter for which internal financial statements are available less 1.4 times the Consolidated Interest Expense for the same period; plus
  - (B) 100% of the aggregate Net Cash Proceeds received by the Customer from the issuance or sale of its Capital Stock (other than Disqualified Stock) subsequent to the Issue Date (other than an issuance or sale to a Subsidiary of the Customer and other than an issuance or sale to an employee stock ownership plan or to a trust established by the Customer or any of its Subsidiaries for the benefit of their employees) and 100% of any cash capital contribution received by the Customer from its stockholders subsequent to the Issue Date; PROVIDED, HOWEVER, that any Net Cash Proceeds received by the Customer from the issue or sale of its Capital Stock or cash capital contributions received by the Customer and used to Incur Indebtedness pursuant Section 6.02(b)(2) shall be excluded from the calculation of Net Cash Proceeds and cash capital contributions under this clause (B) until and to the extent any Indebtedness Incurred pursuant to Section 6.02(b)(2) in respect of such Net Cash Proceeds or cash capital contributions has been treated, pursuant to Section 6.02(d)(3), as Incurred pursuant to Section 6.02(a); plus
  - (C) the amount by which Indebtedness of the Customer or any Subsidiary Guarantor is reduced on the Customer's balance sheet upon the conversion or exchange subsequent to the Issue Date of any Indebtedness convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Customer (less the amount of any cash, or the fair value of any other property, distributed by the Customer upon such conversion or exchange); plus
  - (D) an amount equal to the sum of (i) the net reduction in the Investments (other than Permitted Investments) made by the Customer or any Subsidiary Guarantor in any Person resulting from repurchases, repayments or redemptions of such Investments by such Person, proceeds realized on the sale of such Investment and proceeds representing the return of capital (excluding dividends and distributions to the extent included in Consolidated Operating Cash Flow), in each case

received by the Customer or any Subsidiary Guarantor, and (ii) to the extent such Person is an Unrestricted Subsidiary, the portion (proportionate to the Customer's equity interest in such Subsidiary) of the fair market value of the net assets of such Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Subsidiary Guarantor; PROVIDED, HOWEVER, that the foregoing sum shall not exceed, in the case of any such Person or Unrestricted Subsidiary, the amount of Investments (excluding Permitted Investments) previously made (and treated as a Restricted Payment) by the Customer or any Subsidiary Guarantor in such Person or Unrestricted Subsidiary.

# (b) The preceding provisions of Section 6.03(a) shall not prohibit:

- (1) any Restricted Payment made out of the Net Cash Proceeds of the substantially concurrent sale of, or made by exchange for, Capital Stock of the Customer (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Customer or an employee stock ownership plan or to a trust established by the Customer or any of its Subsidiaries for the benefit of their employees) or a substantially concurrent cash capital contribution received by the Customer from its stockholders; PROVIDED, HOWEVER, that (A) such Restricted Payment shall be excluded from subsequent calculations of the amount of Restricted Payments and (B) the Net Cash Proceeds from such sale or such cash capital contribution (to the extent so used for such Restricted Payment) shall be excluded from the calculation of amounts under Section 6.03(a)(3)(B);
- (2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Obligations (other than Permitted Subordinated Obligations) of the Customer made by exchange for, or out of the proceeds of the substantially concurrent Incurrence of, Indebtedness of such Person which is permitted to be Incurred pursuant to Section 6.02; PROVIDED, HOWEVER, that such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value shall be excluded from subsequent calculations of the amount of Restricted Payments;
- (3) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Permitted Subordinated Obligations of the Customer Incurred pursuant to Section 6.02(b)(11) made by exchange for, or out of the proceeds of the substantially concurrent Incurrence of, Subordinated Obligations that have, at the time of Incurrence, a weighted Average Life that is greater than the then remaining weighted Average Life of the Loans and a Stated Maturity that is later than the date that is 91 days after the Maturity Date of the Loans; PROVIDED, HOWEVER, that such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value shall be excluded from subsequent calculations of the amount of Restricted Payments;
- (4) dividends paid within 60 days after the date of declaration thereof if at such date of declaration such dividend would have complied with this

Section 6.03; PROVIDED, HOWEVER, that such dividend shall be included in subsequent calculations of the amount of Restricted Payments;

- (5) so long as no Event of Default has occurred and is continuing, (A) the purchase, redemption or other acquisition of shares of Capital Stock of the Customer or any of its Subsidiaries from employees, former employees, directors or former directors of the Customer or any of its Subsidiaries (or permitted transferees of such employees, former employees, directors or former directors), pursuant to the terms of the agreements (including employment agreements) or plans (or amendments thereto) approved by the Board of Directors under which such individuals purchase or sell or are granted the option to purchase or sell, shares of such Capital Stock; PROVIDED, HOWEVER, that the aggregate amount of such Restricted Payments (excluding amounts representing cancellation of Indebtedness) shall not exceed \$5 million in any calendar year; PROVIDED FURTHER, HOWEVER, that such repurchases and other acquisitions shall be excluded from subsequent calculations of the amount of Restricted Payments and (B) loans or advances to employees of the Customer or any Subsidiary of the Customer the proceeds of which are used to purchase Capital Stock of the Customer, in an aggregate amount not in excess of \$2 million at any one time outstanding; PROVIDED, HOWEVER, that the amount of such loans and advances shall be excluded from subsequent calculations of the amount of Restricted Payments;
- (6) the declaration or payment of dividends on Disqualified Stock issued pursuant to Section 6.02; PROVIDED, HOWEVER, that at the time of declaration of such dividend, no Event of Default shall have occurred and be continuing (or result therefrom); PROVIDED FURTHER, HOWEVER, that such dividends shall be excluded from subsequent calculations of the amount of Restricted Payments;
- (7) repurchases of Capital Stock deemed to occur upon exercise of stock options, warrants or other convertible securities if such Capital Stock represents a portion of the exercise price thereof; PROVIDED, HOWEVER, that such Restricted Payments shall be excluded from subsequent calculations of the amount of Restricted Payments;
- (8) cash payments in lieu of the issuance of fractional shares in connection with a reverse stock split of the Capital Stock of the Customer or the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Customer; PROVIDED, HOWEVER, that any such cash payment shall not be for the purpose of evading the limitation of this Section 6.03 (as determined in good faith by the Board of Directors); PROVIDED FURTHER, HOWEVER, that such payments shall be excluded in subsequent calculations of the amount of Restricted Payments;
- (9) in the event of a Change of Control or to the extent permitted by Section 6.05, and if no Event of Default shall have occurred and be

continuing, the payment, purchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations of the Customer, in each case, at a purchase price not greater than 101% of the principal amount of such Subordinated Obligations, plus any accrued and unpaid interest thereon; PROVIDED, HOWEVER, that prior to such payment, purchase, redemption, defeasance or other acquisition or retirement, the Customer has made an offer to prepay the Loans in full; PROVIDED FURTHER, HOWEVER, that such payments, purchases, redemptions, defeasances or other acquisitions or retirements shall be excluded from subsequent calculations of the amount of Restricted Payments;

- (10) payments of intercompany subordinated Indebtedness, the Incurrence of which was permitted under Section 6.02(b) (3); PROVIDED, HOWEVER, that no Event of Default has occurred and is continuing or would otherwise result therefrom; PROVIDED FURTHER, HOWEVER, that such payments shall be excluded from subsequent calculations of the amount of Restricted Payments;
- (11) the repurchase, redemption or other acquisition or retirement for value of any equity interests of the Customer or any Subsidiary Guarantor (other than Disqualified Stock) held by any employee of the Customer made in lieu of withholding taxes resulting from the exercise, exchange or conversion of stock options, warrants or other similar rights; PROVIDED, HOWEVER, that no Event of Default has occurred and is continuing or would otherwise result therefrom; PROVIDED FURTHER, HOWEVER, that such payments shall be excluded from subsequent calculations of the amount of Restricted Payments; or
- (12) other Restricted Payments in an amount not to exceed \$25 million per calendar year (with unused amounts in any calendar year being permitted to be carried over for the next succeeding calendar years); PROVIDED, HOWEVER, such Restricted Payments, when taken together with all other Restricted Payments made pursuant to this clause (12), do not exceed \$100 million in the aggregate; PROVIDED FURTHER, HOWEVER, that no Event of Default has occurred and is continuing or would otherwise result therefrom; PROVIDED FURTHER, HOWEVER, that such payments shall be excluded from subsequent calculations of the amount of Restricted Payments.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Customer or such Subsidiary Guarantor, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount and any non-cash Restricted Payment shall be determined conclusively by the Board of Directors of the Customer acting in good faith.

SECTION 6.04. LIMITATION ON RESTRICTIONS ON DISTRIBUTIONS FROM SUBSIDIARY GUARANTORS. The Customer shall not, and shall not permit any

Subsidiary Guarantor to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary Guarantor to (a) pay dividends or make any other distributions on its Capital Stock to the Customer or a Subsidiary Guarantor or pay any Indebtedness owed to the Customer, (b) make any loans or advances to the Customer or (c) transfer any of its property or assets to the Customer, except:

- (1) with respect to clauses (a), (b) and (c),
  - (A) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Effective Date;
- (B) any encumbrance or restriction with respect to a Subsidiary Guarantor pursuant to an agreement relating to any Capital Stock or Indebtedness Incurred by such Subsidiary Guarantor on or prior to the date on which such Subsidiary Guarantor was acquired by the Customer (other than Indebtedness Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Subsidiary Guarantor became a Subsidiary Guarantor or was acquired by the Customer) and outstanding on such date;
- (C) any encumbrance or restriction pursuant to an agreement effecting a Refinancing of Indebtedness Incurred pursuant to an agreement referred to in Section 6.04(1)(A) or (B) or this clause (C) or contained in any amendment to an agreement referred to in Section 6.04(1)(A) or (B) or this clause (C); PROVIDED, HOWEVER, that the encumbrances and restrictions with respect to such Subsidiary Guarantor contained in any such refinancing agreement or amendment are no less favorable in any material respect to the Lender than encumbrances and restrictions with respect to such Subsidiary Guarantor contained in such predecessor agreements on the Effective Date or the date such Subsidiary Guarantor became a Subsidiary Guarantor, whichever is applicable;
- (D) any encumbrance or restriction with respect to a Subsidiary Guarantor (or any of its property or assets) imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Subsidiary Guarantor (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;
- (E) any encumbrance or restriction consisting of net worth provisions in leases and other agreements entered into by the Customer or any Subsidiary Guarantor in the ordinary course of business; and
- (F) any encumbrance or restriction consisting of customary provisions in joint venture agreements relating to joint ventures

that are not Subsidiary Guarantors and other similar agreements entered into in the ordinary course of business; and

- (2) with respect to clause (c) only,
- (A) any encumbrance or restriction consisting of customary nonassignment provisions in leases governing leasehold interests to the extent such provisions restrict the assignment or transfer of the lease or the property leased thereunder;
- (B) any encumbrance or restriction contained in security agreements, pledges or mortgages securing Indebtedness of a Subsidiary Guarantor to the extent such encumbrance or restriction restricts the transfer of the property subject to such security agreements, pledges or mortgages;
- (C) any encumbrance or restriction consisting of (i) purchase money obligations for property acquired in the ordinary course of business and (ii) Capitalized Lease Obligations permitted under this Agreement, in each case, that impose encumbrances or restrictions of the nature described in Section 6.04(c) on the property so acquired; and
- (D) any encumbrance or restriction pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Customer or any Subsidiary Guarantor.

## SECTION 6.05. LIMITATION ON SALES OF ASSETS AND SUBSIDIARY STOCK.

- (a) The Customer shall not, and shall not permit any Subsidiary Guarantor to, directly or indirectly, consummate any Asset Disposition unless:
  - (1) the Customer or such Subsidiary Guarantor receives consideration at the time of such Asset Disposition at least equal to the fair market value (including as to the value of all non-cash consideration), as determined in good faith by the Board of Directors, of the shares and assets subject to such Asset Disposition;
  - (2) at least 75% of the consideration thereof received by the Customer or such Subsidiary Guarantor is in the form of cash or cash equivalents;
  - (3) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Customer or such Subsidiary Guarantor, as the case may be,
    - (A) first, to the extent the Customer or such Subsidiary Guarantor elects (or is required by the terms of any Indebtedness), to

prepay, repay, redeem or purchase Senior Indebtedness of the Customer (including the Loans) or Indebtedness (other than any Disqualified Stock) of any Wholly Owned Subsidiary (in each case other than Indebtedness owed to the Customer or an Affiliate of the Customer) within one year from the later of the date of such Asset Disposition or the receipt of such Net Available Cash;

- (B) second, to the extent of the balance of such Net Available Cash after application in accordance with clause (A), to the extent the Customer or such Subsidiary Guarantor elects, to acquire Additional Assets within one year from the later of the date of such Asset Disposition or the receipt of such Net Available Cash; PROVIDED, HOWEVER, that the Customer shall have an additional six months to apply such Net Available Cash pursuant to this clause (B) if it shall have entered into a binding acquisition or purchase contract in respect of Additional Assets prior to the expiration of such one-year period; and
- (C) third, to the extent of the balance of such Net Available Cash after application in accordance with clauses (A) and (B), to make an offer to the Lender to prepay the Loans and to the holders of other Senior Indebtedness of the Customer designated by the Customer to purchase such other Senior Indebtedness of the Customer pursuant to and subject to the conditions contained in this Agreement or the documentation governing such Senior Indebtedness, as applicable;

PROVIDED, HOWEVER, that in connection with any prepayment, repayment or purchase of Indebtedness pursuant to clause (A) or (C) above, the Customer or such Subsidiary Guarantor shall permanently retire such Indebtedness and shall cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased.

Notwithstanding the foregoing provisions of this Section 6.05, the Customer and the Subsidiary Guarantors shall not be required to apply any Net Available Cash in accordance with this Section 6.05(a) except to the extent that the aggregate Net Available Cash from all Asset Dispositions which is not applied in accordance with this Section 6.05(a) exceeds \$10 million. Pending application of Net Available Cash pursuant to this Section 6.05(a), such Net Available Cash shall be invested in Cash Equivalents or applied to temporarily reduce revolving credit indebtedness.

For the purposes of this Section 6.05(a), the following are deemed to be cash or cash equivalents:

(1) the assumption or discharge of Indebtedness of the Customer (other than obligations in respect of Disqualified Stock of the Customer) or any Subsidiary Guarantor and the release of the Customer or such Subsidiary Guarantor from all liability on such Indebtedness in connection with such Asset Disposition (in which case the Customer shall, without further action,

be deemed to have applied such deemed cash to Indebtedness in accordance with clause (3)(A) above); and

- (2) securities received by the Customer or any Subsidiary Guarantor from the transferee that are promptly converted by the Customer or such Subsidiary Guarantor into cash, to the extent of cash received in that conversion.
- (b) In the event of an Asset Disposition that requires the prepayment of the Loans (and purchase of other Senior Indebtedness of the Customer) pursuant to Section 6.05(a)(3)(C), the Customer shall offer to prepay a pro rata portion of the Loans at 100% of their outstanding principal amount, without premium, plus accrued and unpaid interest thereon, such pro rata portion of the Loans to be calculated by multiplying (i) the aggregate amount of the Net Available Cash to be applied under Section 6.05(a)(3)(C) TIMES (ii) a fraction, the numerator of which is the outstanding aggregate principal amount of the Loans and the denominator of which is the outstanding aggregate principal amount all Senior Indebtedness (including the Loans) subject to such prepayment or purchase (in each case calculated just prior to such prepayment or purchase). If the Net Available Cash allotted to the Loans shall be less than the outstanding aggregate principal amount of all the Loans, the Customer shall prepay the Loans in the manner provided in Section 2.04(a). The Customer shall not be required to make such an offer pursuant to Section 6.05(a)(3)(C) if the Net Available Cash available therefor is less than \$5 million (which lesser amount shall be carried forward for purposes of determining whether such an offer is required with respect to the Net Available Cash from any subsequent Asset Disposition). Upon completion of such an offer, Net Available Cash shall be deemed to be reduced by the aggregate amount of such offer.
- (c) Promptly, and in any event within 10 days after the Customer becomes obligated to make the foregoing offer, the Customer shall deliver to the Lender a written notice thereof. The notice shall specify a prepayment date not less than 30 days nor more than 60 days after the date of such notice (the "PREPAYMENT DATE") and shall contain such information concerning the business of the Customer which the Customer in good faith believes will enable the Lender to make an informed decision (which at a minimum will include (A) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements) of the Customer, the most recent subsequently filed Quarterly Report on Form 10-Q, if any, and all Current Reports on Form 8-K of the Customer filed subsequent to such Quarterly Report, if any, other than Current Reports describing Asset Dispositions otherwise described in the offering materials (or corresponding successor reports), (B) a description of material developments in the Customer's business subsequent to the date of the latest of such Reports and (C) if material, appropriate pro forma financial information). Not later than the date upon which written notice of such offer is delivered to the Lender as provided above, the Customer shall deliver to the Lender an Officers' Certificate as to (A) the amount of the offer (the "OFFER AMOUNT"), including information as to any other Senior Indebtedness included in the offer, (B) the allocation of the Net Available Cash from the Asset Dispositions pursuant to which such offer is being made and (C) the compliance of such allocation with the provisions of Section 6.05(a) and (b).

- (d) The Customer shall not, and shall not permit any Subsidiary Guarantor to, engage in any Asset Swaps, unless:
- (1) at the time of entering into such Asset Swap and immediately after giving effect to such Asset Swap, no Event of Default shall have occurred and be continuing or would occur as a consequence thereof;
- (2) in the event such Asset Swap involves the transfer by the Customer or any Subsidiary Guarantor of assets having an aggregate fair market value, as determined by the Board of Directors of the Customer in good faith, in excess of \$10 million, the terms of such Asset Swap have been approved by a majority of the members of the Board of Directors of the Customer; and
- (3) in the event such Asset Swap involves the transfer by the Customer or any Subsidiary Guarantor of assets having an aggregate fair market value, as determined by the Board of Directors of the Customer in good faith, in excess of \$50 million, the Customer has received a written opinion from an independent investment banking firm of nationally recognized standing that such Asset Swap is fair to the Customer or such Subsidiary Guarantor, as the case may be, from a financial point of view.

## SECTION 6.06. LIMITATION ON AFFILIATE TRANSACTIONS.

- (a) The Customer shall not, and shall not permit any Subsidiary Guarantor to, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, employee compensation arrangements or the rendering of any service) with, or for the benefit of, any Affiliate of the Customer (an "AFFILIATE TRANSACTION") unless:
  - (1) the terms of the Affiliate Transaction are no less favorable to the Customer or such Subsidiary Guarantor than those that could be obtained at the time of the Affiliate Transaction in arm's-length dealings with a Person who is not an Affiliate;
  - (2) if such Affiliate Transaction involves an amount in excess of \$5 million, the terms of the Affiliate Transaction are set forth in writing and a majority of the non-employee directors of the Customer disinterested with respect to such Affiliate Transaction have determined in good faith that the criteria set forth in clause (1) are satisfied and have approved the relevant Affiliate Transaction as evidenced by a resolution of the Board of Directors; and
  - (3) if such Affiliate Transaction involves an amount in excess of \$20 million, the Board of Directors shall also have received a written opinion from an Independent Qualified Party to the effect that such Affiliate Transaction is fair, from a financial standpoint, to the Customer and the Subsidiary Guarantors or is not less favorable to the Customer and the Subsidiary Guarantors than could reasonably be expected to be obtained at the time in an arm's-length transaction with a Person who was not an Affiliate.

- (b) The provisions of the preceding paragraph (a) shall not prohibit:
- (1) any Investment (other than a Permitted Investment) or other Restricted Payment, in each case permitted to be made pursuant to (but only to the extent included in the calculation of the amount of Restricted Payments made pursuant to) Section 6.03(a)(3);
- (2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the Board of Directors;
- (3) loans or advances to employees in the ordinary course of business in accordance with the past practices of the Customer or the Subsidiary Guarantors, but in any event not to exceed \$2 million in the aggregate outstanding at any one time;
- (4) the payment of reasonable and customary fees to, and indemnity provided on behalf of, directors of the Customer and the Subsidiary Guarantors who are not employees of the Customer or the Subsidiary Guarantors;
- (5) any transaction with the Customer, a Subsidiary Guarantor or joint venture or similar entity which would constitute an Affiliate Transaction solely because the Customer or a Subsidiary Guarantor owns an equity interest in or otherwise controls such Subsidiary Guarantor, joint venture or similar entity;
  - (6) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Customer; and
- (7) any agreement as in effect on the Issue Date and described in the Offering Memorandum for the Customer's  $9^5/_8\%$  Senior Notes due 2013, as these agreements may be amended, modified, supplemented, extended or renewed from time to time (so long as any amendment, modification, supplement, extension or renewal is not less favorable to the Customer or the Subsidiary Guarantors), and the transactions evidenced thereby.
- SECTION 6.07. LIMITATION ON LINE OF BUSINESS. The Customer shall not, and shall not permit any Subsidiary Guarantor, to engage in any business other than a Related Business.

SECTION 6.08. LIMITATION ON THE SALE OR ISSUANCE OF CAPITAL STOCK OF SUBSIDIARY GUARANTORS. The Customer:

(1) shall not, and shall not permit any Subsidiary Guarantor to, sell, lease, transfer or otherwise dispose of any Capital Stock of any Subsidiary Guarantor to any Person (other than the Customer or a Wholly Owned Subsidiary), and

- (2) shall not permit any Subsidiary Guarantor to issue any of its Capital Stock (other than, if necessary, shares of its Capital Stock constituting directors' or other legally required qualifying shares) to any Person (other than to the Customer or a Wholly Owned Subsidiary), unless
  - (A) immediately after giving effect to such issuance, sale or other disposition, neither the Customer nor any of its Subsidiaries own any Capital Stock of such Subsidiary Guarantor;
  - (B) such issuance, sale or other disposition is treated as an Asset Disposition and immediately after giving effect to such issuance, sale or other disposition, such Subsidiary Guarantor would continue to be a Subsidiary Guarantor; or
  - (C) immediately after giving effect to such issuance, sale or other disposition, such Subsidiary Guarantor would no longer constitute a Subsidiary Guarantor and any Investment in such Person remaining after giving effect thereto is treated as a new Investment by the Customer and such Investment would be permitted to be made under Section 6.03 if made on the date of such issuance, sale or other disposition.

For purposes of this Section 6.08, the creation of a Lien on any Capital Stock of a Subsidiary Guarantor to secure Indebtedness of the Customer or any of the Subsidiary Guarantors will not be deemed to be a violation of this Section 6.08; PROVIDED, HOWEVER, that any sale or other disposition by the secured party of such Capital Stock following foreclosure of its Lien will be subject to this Section 6.08.

SECTION 6.09. LIMITATION ON SALE/LEASEBACK TRANSACTIONS. The Customer shall not, and shall not permit any Subsidiary Guarantor to, enter into any Sale/Leaseback Transaction with respect to any property unless:

- (1) the Customer or such Subsidiary Guarantor would be entitled to (A) Incur Indebtedness in an amount equal to the Attributable Debt with respect to such Sale/Leaseback Transaction pursuant to Section 6.02, and (B) create a Lien on such property securing such Attributable Debt without equally and ratably securing the Loans;
- (2) the net proceeds received by the Customer or any Subsidiary Guarantor in connection with such Sale/Leaseback Transaction are at least equal to the fair market value (as determined by the Board of Directors) of such property; and

the Customer applies the proceeds of such transaction in compliance with Section 6.05.

### ARTICLE VII.

### EVENTS OF DEFAULT

SECTION 7.01. EVENTS OF DEFAULT. If any of the following events ("EVENTS OF DEFAULT") shall occur:

- (a) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) default shall be made in the payment of any interest on any Loan for more than five days after the same shall become due and payable;
- (c) default shall be made in the payment of any fee or any other amount (other than an amount referred to in clause (a) or (b) of this Article) payable under this Agreement or under any other Loan Document for more than five Business Days;
- (d) any representation or warranty made or deemed made by or on behalf of the Customer in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall prove to have been materially inaccurate or false when made or deemed made; PROVIDED, HOWEVER, that if any representation or warranty made in any report, certificate, financial statement or other document furnished to the Lender after the Effective Date shall prove to be materially inaccurate or false when made, such inaccuracy or falsity shall not constitute an Event of Default unless the Customer fails to correct or ameliorate such inaccuracy in a manner reasonably acceptable to the Lender as soon as reasonably practicable, but in any event by no later than 10 Business Days, after (i) the Customer became aware or should have become aware of such inaccuracy or falsity or (ii) the Lender provides notice to the Customer of its discovery of such material inaccuracy or falsity;
- (e) the Customer shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a) or 5.03 (with respect to the existence of the Customer and the Subsidiary Guarantors) of this Agreement or Section 8(c) of the Security Agreement;
- (f) the Customer shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Document or any Subsidiary Guarantor shall fail to observe or perform any covenant, condition or agreement contained in a Subsidiary Guarantee (other than those specified in clause (a), (b), (c) or (e) of this Article, as applicable) and such failure shall continue unremedied for a period of 30 or more days after the earlier of (i) a Responsible Officer of such Person obtaining actual knowledge thereof and (ii) such Person receiving notice thereof from the Lender;
- (g) (i) the Customer or any Subsidiary Guarantor shall fail (as principal or as guarantor or other surety) to make any payment of principal of or premium or make-whole amount or interest on any Material Indebtedness beyond any period of grace provided with

respect thereto, or (ii) any Material Indebtedness of the Customer or a Subsidiary Guarantor is accelerated by the holders thereof because of a default;

- (h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Customer or a Subsidiary Guarantor or of a substantial part of any of their respective assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Customer or a Subsidiary Guarantor or for a substantial part of any of their respective assets, and, in any such case, such proceeding or petition shall continue unstayed or undismissed for a period of 60 or more days;
- (i) the Customer or a Subsidiary Guarantor shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Customer or such Subsidiary Guarantor or for a substantial part of their respective assets, (iv) file an answer admitting the material allegations of a petition filed against them in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;
- (j) either of the Customer or a Subsidiary Guarantor shall admit in writing its inability, or fail generally, to pay its debts as they become due;
- (k) either (i) the Lien created by the Security Documents shall at any time not constitute a valid and perfected first priority (subject to other Liens permitted under Section 6.01) Lien on the collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein) in favor of the Lender, free and clear of all other Liens (other than Liens permitted under Section 6.01 or under the respective Security Documents); PROVIDED, HOWEVER, that the foregoing events shall not constitute an Event of Default if such events occur solely as a result of any action taken by the Lender or its representatives, and PROVIDED, FURTHER, that if the foregoing events do not result in the imposition of intervening Liens or in the filing of actions which would prejudice the Lender's position as a first priority secured creditor, such event shall not constitute an Event of Default if the Customer has restored the Lender's valid and perfected first priority Lien within 20 Business Days from the discovery of such event, or (ii) except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason be terminated;
- (l) any material provision of any of the Security Documents or the Subsidiary Guarantees shall at any time for any reason cease to be valid and binding or in full force and effect after their effective date or the Customer, a Subsidiary Guarantor or any Person acting on such Person's behalf or upon such Person's instructions shall so assert in writing; or any provision of any of such agreements shall, in good faith, be declared to be null and void, or the validity or enforceability thereof shall be contested by the Customer, a Subsidiary Guarantor or any Person acting on such Person's behalf or upon such Person's instructions or by any Governmental Authority; or

(m) any final, nonappealable judgment or decree for the payment of money which, when taken together with all other such judgments and decrees, causes the aggregate amount of such judgments or decrees entered against the Customer and the Subsidiary Guarantors to exceed \$25 million (net of any amounts with respect to which a reputable and creditworthy insurance company has acknowledged liability in writing), remains outstanding for a period of 45 consecutive days after such judgment and is not discharged or waived;

then, and in every such event (other than an event with respect to the Customer or a Subsidiary Guarantor described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Lender may, by notice to the Customer, take either or both of the following actions, at the same or different times: terminate the Commitment and declare the portion of the Loans then unpaid to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued and unpaid interest thereon and all fees and other obligations of the Customer accrued hereunder and under the other Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Customer; and in case of any event with respect to the Customer or a Subsidiary Guarantor described in clause (h) or (i) of this Article, the Commitment shall automatically terminate and the principal of the Loans then unpaid, together with accrued and unpaid interest thereon and all fees and other obligations of the Customer accrued hereunder and under the other Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Customer.

#### ARTICLE VIII.

#### **GUARANTEES**

SECTION 8.01. EXECUTION AND DELIVERY OF SUBSIDIARY GUARANTEES. The Customer shall cause a duly authorized officer of each of its Subsidiaries identified as a Guarantor in Schedule III (individually a "SUBSIDIARY GUARANTOR" and collectively the "SUBSIDIARY GUARANTORS," which term shall include at any time after the Effective Date, all additional Guarantors from time to time becoming Subsidiary Guarantors pursuant to Section 8.05 but shall exclude at such time any Subsidiary theretofore released from its obligations as a Subsidiary Guarantor pursuant to Section 8.03), to execute and deliver a Guarantee substantially in the form of Exhibit D (individually a "SUBSIDIARY GUARANTEE" and collectively the "SUBSIDIARY GUARANTEES," which term shall include after the Effective Date all subsidiary guarantees from time to time being executed and delivered by such additional Guarantors).

## SECTION 8.02. SUBSIDIARY GUARANTORS MAY CONSOLIDATE, ETC., ON CERTAIN TERMS.

(a) Nothing contained in this Agreement or in any Subsidiary Guarantee shall prevent any consolidation or merger of a Subsidiary Guarantor with or into the Customer or

another Subsidiary Guarantor, or shall prevent the transfer of all or substantially all of the assets of a Subsidiary Guarantor to the Customer or another Subsidiary Guarantor. Upon any such consolidation, merger, transfer or sale, the Subsidiary Guarantee of the Subsidiary Guarantor being consolidated or merged with or into the Customer or such other Subsidiary Guarantor (or the assets of which are being so transferred) shall no longer have any force or effect.

(b) Nothing contained in this Agreement shall prevent any consolidation or merger of a Subsidiary Guarantor with or into a corporation or corporations other than the Customer or another Subsidiary Guarantor (whether or not affiliated with the Subsidiary Guarantor), or successive consolidations or mergers in which a Subsidiary Guarantor or its successor or successors shall be a party or parties, or shall prevent the transfer of all or substantially all of the assets of a Subsidiary Guarantor, to a corporation other than the Customer or another Subsidiary Guarantor (whether or not affiliated with the Subsidiary Guarantor) authorized to acquire and operate the same in the event that such consolidation, merger or transfer complies with the terms and conditions of the Indenture and all Subsidiary Guarantees.

SECTION 8.03. RELEASES FOLLOWING SALE OF ASSETS. Concurrently with any sale or other disposition of all or substantially all of the assets of any Subsidiary Guarantor or all of the Capital Stock of any Subsidiary Guarantor, in each case, in compliance with the terms hereof, then such Subsidiary Guarantor (in the event of a sale or other disposition of all of the Capital Stock of such Subsidiary Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of a Subsidiary Guarantor) shall be released from and relieved of its obligations under its Subsidiary Guarantee and under this Article VIII. Any Subsidiary Guarantor not released from its obligations under its Subsidiary Guarantee as provided in this Article VIII.

SECTION 8.04. APPLICATION OF CERTAIN TERMS AND PROVISIONS TO THE SUBSIDIARY GUARANTORS. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Lender to or on any Subsidiary Guarantor may be given or served as described in this Agreement as if references herein to the Customer were references to such Subsidiary Guarantor.

SECTION 8.05. ADDITION OF SUBSIDIARY GUARANTORS. If at any time any additional Material Subsidiary is formed or acquired by the Customer after the date hereof and such Material Subsidiary is organized under the laws of a jurisdiction of the United States of America, the Customer will notify the Lender thereof and unless such Material Subsidiary qualifies for designation as an Unrestricted Subsidiary and is designated as an Unrestricted Subsidiary, all in accordance with the provisions of the definition thereof, the Customer will cause such Material Subsidiary to become a party to a Subsidiary Guarantee within seven Business Days after such Material Subsidiary is formed or acquired and promptly deliver to the Lender a duly executed counterpart of such Subsidiary Guarantee and an opinion of counsel reasonably satisfactory to the Lender as to the due authorization, execution and delivery and enforceability of such Subsidiary Guarantee and such other matters as the Lender may reasonably require, including the matters covered by the opinion delivered pursuant to Section 4.01(e).

## ARTICLE IX.

#### MISCELLANEOUS

SECTION 9.01. NOTICES. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

## (a) if to the Customer, to:

Sirius Satellite Radio Inc. 1221 Avenue of the Americas, 36<sup>th</sup> Floor New York, New York 10020 Attention: Patrick Donnelly Tel: (212) 584-5180

Fax: (212) 584-5353

#### (b) if to the Lender, to:

Space Systems/Loral, Inc. 3825 Fabian Way Palo Alto, CA 94304-4604 Attention: Ronald A. Haley Tel: (650) 852-7205

Fax: (650) 852-7912

with a copy to:

Loral Space & Communications Inc. 600 Third Avenue New York, New York 10016 Attention: Richard P. Mastoloni

Tel: (212) 338-5605 Fax: (212) 867-9167

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

SECTION 9.02. WAIVERS; AMENDMENTS.

(a) NO DEEMED WAIVERS; REMEDIES CUMULATIVE. No failure or delay by the Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or

discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Customer therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Lender may have had notice or knowledge of such Default or Event of Default at the time.

## (b) AMENDMENTS.

(i) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Customer and the Lender. If more than one Lender shall be a party to this Agreement, any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Customer and the Required Lenders and, if the rights or duties of the administrative agent, if any, are affected thereby, by the administrative agent; PROVIDED that no such amendment or waiver shall (1) increase any Commitment of any Lender without the prior written consent of such Lender, (2) reduce the principal of, or rate of interest on, any Loan or any fees specified herein, due to a Lender without the prior written consent of each Lender directly affected thereby, (3) postpone or otherwise change the date fixed for any payment of principal of, or interest on, any Loan or any fees hereunder due to a Lender or for any termination of any Commitment of a Lender, without the prior written consent of each Lender directly affected thereby, (4) decrease any amount payable to a Lender pursuant to the provisions of Article II hereof, without the prior written consent of each Lender directly affected thereby, (5) release the Customer from its obligations hereunder or release a Subsidiary Guarantor from its obligations under the Subsidiary Guarantee (except as expressly permitted hereby or thereby), without the prior written consent of all of the Lenders, (6) release Collateral from the Liens created by the Security Documents (except as expressly permitted hereby or thereby), without the prior written consent of all of the Lenders, (7) amend or modify the provisions of this Section 9.02(b), without the prior written consent of all of the Lenders, or (8) amend the definition of "Required Lenders," without the prior written consent of all of the Lenders. No such amendment, modification, waiver or consent shall adversely affect the rights and obligations of the administrative agent, if any, without their prior written consent. Each Lender and Participant shall be bound by any amendment, modification, waiver or consent authorized as provided herein (whether or not any applicable Note shall have been marked to indicate such amendment, modification, waiver or consent); and any consent by any holder of a Loan, a Commitment or a Note shall bind any Person subsequently acquiring such Loan, Commitment or Note (whether or not any applicable Note is so marked).

(ii) Notwithstanding the foregoing provisions of this Section 9.02(b) or anything to the contrary contained in this Agreement, any Lender which has requested that it not receive material, non-public information concerning the Customer or any of the

Subsidiary Guarantors and which is therefore unable or unwilling to vote with respect to an issue arising under this Agreement will agree to vote and will be deemed to have voted its Commitment under this Agreement pro rata in accordance with the percentage of the Commitment voted in favor of, and the percentage of the Commitment voted against, any such issue under this Agreement.

## SECTION 9.03. EXPENSES; INDEMNITY; DAMAGE WAIVER; COMMITMENT FEE.

- (a) COSTS AND EXPENSES. The Customer and the Lender shall each pay their own costs and expenses (including the fees, charges and disbursements of their counsel) in connection with the preparation of this Agreement and the other Loan Documents. The Customer shall pay (i) all reasonable out-of-pocket expenses incurred by the Lender and its Affiliates, including the reasonable fees, charges and disbursements of Lender's counsel, in connection with the administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof, (ii) all out-of-pocket expenses incurred by the Lender, including the fees, charges and disbursements of any counsel for the Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder, including in connection with any workout, restructuring or negotiations in respect thereof and (iii) all taxes, assessments and other charges and reasonable costs and expenses incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Loan Document or any other document referred to therein.
- (b) INDEMNIFICATION BY THE CUSTOMER. The Customer shall indemnify the Lender and each Related Party of the Lender (each such Person being called an "INDEMNITEE") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Customer or any Environmental Liability related in any way to the Customer, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; PROVIDED that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.
- (c) WAIVER OF CONSEQUENTIAL DAMAGES, ETC. To the extent permitted by applicable law, the Customer shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result

of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof.

- (d) PAYMENTS. All amounts due under this Section shall be payable upon written demand therefor.
- (e) COMMITMENT FEE. The Customer agrees to pay to the Lender a commitment fee on the daily Unused Commitment from the date hereof until the expiration or termination of the Commitment in accordance with Section 4.03 of this Agreement (the "COMMITMENT PERIOD"), at a rate per annum equal to 0.50% (50 basis points), payable quarterly in arrears on the last day of each March, June, September and December, commencing June 30, 2006, and on the last day of the Commitment Period.

#### SECTION 9.04. SUCCESSORS AND ASSIGNS.

- (a) ASSIGNMENTS GENERALLY. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Customer may not assign or otherwise transfer any of its rights or obligations hereunder or under the other Loan Documents without the prior written consent of the Lender (and any attempted assignment or transfer by the Customer without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their permitted successors and assigns and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- (b) ASSIGNMENT BY THE LENDER. The Lender may assign all or a portion of the Loans and of its rights, duties and obligations under this Agreement (including all or a portion of the Commitment) and the other Loan Documents to any other Person without the prior written consent of the Customer, PROVIDED that (a) the aggregate outstanding principal amount of the Loans (or the Commitment) subject to any such assignment shall be \$5,000,000 or a whole multiple thereof, unless such assignment is of the Lender's entire interest, but in no event shall there be more than 10 Lenders at any one time and (b) as long as no Default of the type described in clauses (a) or (b) of Section 7.01 or Event of Default of the type described in clause (h) or (i) of Section 7.01 shall have occurred and be continuing at such time, no such assignment shall be made to any Person other than an Eligible Assignee without the Customer's prior written consent. Upon execution and delivery by the assignee to the Customer of an instrument in writing pursuant to which such assignee agrees to become the "Lender" hereunder, the assignee shall have the obligations, rights and benefits of the Lender hereunder in respect of the Commitment (or portion thereof) and Loan(s) theretofore held by the Lender, and the Lender shall be released from the Commitment (or portion thereof) so assigned. For purposes of this Section 9.04(b), the term "Eligible Assignee" shall mean (i) a Lender or any Affiliate thereof, (ii) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company or similar financial institution or entity organized under the laws of (x) the United States, or any state thereof, or (y) any other country which is a member of the OECD, or a political subdivision of any such country, provided that such bank is acting through a branch or agency located either in the country in which it is organized, another country which is also an OECD member or the Cayman Islands and

Person (other than a natural person) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit and has assets under management of at least \$500,000,000. "Eligible Assignee" shall not include a competitor of the Customer.

The Customer hereby acknowledges and agrees that in connection with any assignment by the Lender of less than all of the Loans and the Commitment, the Lender may employ at the expense of the Lender an administrative agent to act on behalf of the Lenders under this Agreement and the other Loan Documents, and the Customer agrees to customary and reasonable modifications to this Agreement and the other Loan Documents to reflect the duties and responsibilities of such agent, acting on behalf of the Lenders, and multiple Lenders. For the avoidance of doubt, it is understood and agreed that in no event shall the amount of the Commitment, the rate of interest on the Loans, the Maturity Date, the definition of Required Lenders, the representations or warranties of the Customer, the negative covenants or the prepayment provisions of the Agreement be modified in connection with the employment of such administrative agent.

(c) PARTICIPATIONS. The Lender may, without the consent of the Customer, sell participations to one or more banks or other entities (a "PARTICIPANT") in all or a portion of the Lender's rights and obligations under this Agreement and the other Loan Documents (including all or a portion of the Loans and the Commitment); PROVIDED that (i) the Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Customer shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement and the other Loan Documents. Any agreement or instrument pursuant to which the Lender sells such a participation shall provide that the Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document. In no event shall the Lender agree with the Participant to take or refrain from taking any action under this Agreement or under any other Loan Document except that the Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (1) increase or extend the term, or extend the time or waive any requirement for the reduction, termination or prepayment, of the Loans, (2) extend the date fixed for the payment of principal of or interest on the Loans, (3) reduce the amount of any such payment of principal or any premium payable hereunder, (4) reduce the rate at which interest is payable on any amount under this Agreement, or reduce any fee or other amount payable to the Participant to a level below the rate at which the Participant is entitled to receive such interest or fee, (5) alter the rights or obligations of the Customer to prepay the Loans, or (6) release any portion of the Collateral or terminate any Lien under the Security Documents prior to the payment in full of the Loan and all amounts required to be paid by the Customer to the Lender under the Loan Documents except as contemplated in the Security Documents.

(d) LIMITATIONS ON RIGHTS OF PARTICIPANTS. A Participant shall not be entitled to receive any greater payment under Section 2.09 than the Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Customer's prior written consent.

SECTION 9.05. SURVIVAL. All covenants, agreements, representations and warranties made by the Customer herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of each Loan, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitment has not expired or terminated. The provisions of Sections 2.09, 2.10 and 9.03 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitment or the termination of this Agreement or any provision hereof.

SECTION 9.06. COUNTERPARTS; INTEGRATION; EFFECTIVENESS. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract between the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. Except as provided in Article IV, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received a counterpart hereof bearing the signature of the Customer, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 9.07. SEVERABILITY. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. GOVERNING LAW; JURISDICTION; ETC.

- (a) GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the law of the State of New York.
- (b) SUBMISSION TO JURISDICTION. The Customer hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be

conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Customer or its properties in the courts of any jurisdiction.

- (c) WAIVER OF VENUE. The Customer hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.
- (d) SERVICE OF PROCESS. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.09. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.10. HEADINGS. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.11. CONFIDENTIALITY. Each of the Customer and the Lender agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to the Customer's and the Lender's Affiliates and to such Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors who need to know (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will agree to keep such Information confidential), (b) to the extent requested by any regulatory authority or to the extent required by applicable laws or regulations or by any subpoena or similar legal process (PROVIDED, that prompt notice of such requested or required disclosure shall be provided to any other party to this Agreement so as to enable such party to obtain a protective order, confidential treatment or other appropriate remedy), (c) to any other party to this Agreement, (d) in connection with the exercise of any remedies hereunder or under any other Loan Document or

any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (e) subject to an agreement containing provisions substantially the same as those of this Section 9.11, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (f) with the consent of the Customer or the Lender, as the case may be, or (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this paragraph or (ii) becomes available to the Customer or to the Lender on a non-confidential basis from a source other than the Customer or the Lender as the case may be, PROVIDED, that such source is not known to be bound by a confidentiality arrangement or otherwise prohibited from transmitting the Information by a contractual, legal or fiduciary obligation. The Lender hereby acknowledges that it is aware of and shall comply with all applicable United States securities laws that impose restrictions upon any Person who has received material, non-public information concerning the Customer with respect to purchasing or selling securities of the Customer and prohibits such Persons from communicating such information to any other Person under circumstances in which it is reasonably foreseeable that such other Person is likely to purchase or sell securities of the Customer. For the purposes of this paragraph, "INFORMATION" means all information (1) received by the Lender from the Customer relating to the Customer or its business, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by the Customer; and (2) received by the Customer from the Lender relating to the Lender or its business, other than such information that is available to the Customer on a non-confidential basis prior to disclosure by the Lender, PROVIDED that, in the case of information received from either party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

## SIRIUS SATELLITE RADIO INC.

By: /s/ David J. Frear

Name: David J. Frear

Title: Executive Vice President and CFO

SPACE SYSTEMS/LORAL, INC.

By: <u>/s/ Richard Mastoloni</u> Name: Richard Mastoloni

Title: Vice President and Treasurer

# SCHEDULE I

## OTHER VENDOR SATELLITES

None.

## SCHEDULE II

## MATERIAL SUBSIDIARIES

Satellite CD Radio, Inc.

## SCHEDULE III

## SUBSIDIARY GUARANTORS

Satellite CD Radio, Inc.

#### EXHIBIT A

#### NOTICE OF BORROWING

[INSERT DATE] To:

Space Systems/Loral, Inc. [INSERT ADDRESS]

This Notice of Borrowing is delivered pursuant to Section 2.03 of the Customer Credit Agreement dated as of May 31, 2006 (as amended, modified or supplemented and in effect from time to time, the "CUSTOMER CREDIT AGREEMENT") between Sirius Satellite Radio Inc., a Delaware corporation (the "CUSTOMER"), and you, as Lender. Unless otherwise defined herein, capitalized terms used in this Notice of Borrowing have the meanings given to them (whether by reference to another document or otherwise) in the Customer Credit Agreement.

This Notice of Borrowing is irrevocable and constitutes a request for a Loan as follows:

1. Purpose of Loan is to [make Milestone Payment] [reimburse Customer for having made Milestone Payment(s)].

2. Aggregate amount of the Loan:	\$
-Amount being paid to Satellite Manufacturer	\$ -
-Aggregate Amount being reimbursed to Customer for	
Milestone Payment(s) made on [insert date(s)]	\$ -

- 3. Date of Loan: \_\_\_.
- 4. Duration of the Interest Period for the Loan: [3 months or a lesser number of months calculated as provided in the definition of LIBOR Rate].

As contemplated by the Customer Credit Agreement, the Customer certifies that all applicable conditions of Sections 4.01 and 4.02 of the Customer Credit Agreement have been met and that, as at the date of this Notice of Borrowing and the date of the Loan (including after giving effect to the making of the Loan and the intended use thereof):

- (a) the representations and warranties of the Customer set out in Article III of the Customer Credit Agreement shall be true and correct on and as of the date of the making of the Loan;
- (b) no Default or Event of Default shall have occurred and be continuing. The Customer further confirms and certifies to the Lender that the proceeds of the requested Loan will be used solely for the purposes specified and permitted by the Customer Credit Agreement;

(c) each of the conditi	ions specified in Section 4.02(a), (d), and (e) of the Customer Credit Agreement have been fulfilled; and
` /	of the requested Loan is added to the aggregate principal amount of all Loans theretofore made to the lamount of the Loans shall not exceed the Commitment then in effect.
	Very truly yours,
	SIRIUS SATELLITE RADIO INC.
	By: Name: Title:
	A-2

# EXHIBIT B

OPINIONS OF NEW YORK AND DELAWARE COUNSEL TO THE CUSTOMER AND THE SUBSIDIARY GUARANTORS

#### EXHIBIT C

#### FORM OF SECURITY AGREEMENT

## **Security Agreement**

SECURITY AGREEMENT, dated as of May 31, 2006 (as amended, modified or supplemented from time to time, this "Agreement"), between SIRIUS SATELLITE RADIO INC., a Delaware corporation (the "Customer"), and SPACE SYSTEMS/LORAL, INC., a Delaware corporation ("SS/L"), as Lender under the Customer Credit Agreement (as defined below) (the "Initial Lender") for the benefit of itself and any other Person that becomes a Lender (as defined in the Customer Credit Agreement) under the Customer Credit Agreement pursuant to Section 9.04 thereof after the date hereof (the Initial Lender, together with the other Lenders and their respective successors and assigns being collectively the "Secured Party").

The Customer and SS/L are parties to that certain Satellite Purchase Agreement, dated as of May 31, 2006 (as such agreement may be modified or amended from time to time, the "Satellite Purchase Agreement"), providing, subject to the terms and conditions thereof, for the performance by SS/L of certain obligations in connection with the construction and delivery of the Satellite (as defined therein) to the Customer. In connection with the Satellite Purchase Agreement, the Initial Lender has agreed to provide financing for a portion of the purchase price due thereunder pursuant to the terms and conditions of that certain Customer Credit Agreement, dated as of May 31, 2006 (as such agreement may be modified or amended from time to time, the "Customer Credit Agreement"), providing, subject to the terms and conditions thereof, for the extension of credit to be made by the Secured Party to the Customer in an aggregate principal amount not exceeding \$100,000,000.

To induce the Secured Party to enter into the Customer Credit Agreement and in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Customer has agreed to grant a security interest in the Collateral (as hereinafter defined) as security for the Obligations (as so defined). Accordingly, the parties hereto agree as follows:

- 1. <u>Definitions</u>. All capitalized terms used herein without definitions shall have the respective meanings provided therefor in the Customer Credit Agreement except the following terms shall have the meanings given to them in the Satellite Purchase Agreement: "<u>Data and Documentation</u>", "<u>Deliverable Items</u>", "<u>Deliverable Services</u>", "<u>Dynamic Satellite Simulator</u>", "<u>Intellectual Property Rights</u>", "<u>Satellite</u>", "<u>SCE</u>", and "<u>Work-in-Progress</u>". All terms defined in the Uniform Commercial Code of the State of New York (as in effect from time to time, the "<u>UCC</u>") and used herein shall have the same definitions herein as specified therein. The term "<u>State</u>" means the State of New York. The terms "<u>Agreement</u>", "<u>Customer</u>", "<u>SS/L</u>", "<u>Initial Lender</u>", "<u>Satellite Purchase Agreement</u>" and "<u>Customer Credit</u> <u>Agreement</u>" shall have the respective meanings given to such terms in the introductory paragraphs hereto. "<u>Collateral</u>" shall have the meaning given to that term in Section 2 hereof.
- 2. <u>Grant of Security Interest</u>. The Customer hereby grants to the Secured Party, to secure the payment and performance in full of all of the Obligations of the Customer in respect of the Loans and Loan Documents, a security interest in the Customer's right, title and interest in, to and under the following properties, assets and rights of the Customer, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the "**Collateral**"):

## A. all Work-in-Progress;

B. all rights of the Customer under the Satellite Purchase Agreement including but not limited to its rights in and to the Satellite, the Dynamic Satellite Simulator, the SCE, Data and Documentation, all other Deliverable Items and Deliverable Services under the Satellite Purchase Agreement and all Intellectual Property Rights;

- C. all insurance proceeds relating to the foregoing and all rights under any insurance policies relating to the foregoing; and
- D. all Proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to the foregoing (as defined in the UCC).
- 3. Authorization to File Financing Statements. The Customer hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction; provided, however that any such description of collateral in any financing statement shall not have an "all assets" collateral description other than to the extent constituting proceeds of the Collateral, and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Customer is an organization, the type of organization and any organizational identification number issued to the Customer and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. The Customer agrees to furnish any such information to the Secured Party promptly upon the Secured Party's reasonable request. The Customer also ratifies its authorization for the Secured Party to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.
- 4. Other Actions. To further the attachment, perfection and first priority of, and the ability of the Secured Party to enforce, the Secured Party's security interest in the Collateral, and without limitation on the Customer's other obligations in this Agreement, the Customer agrees, in each case at the Customer's expense, to take any and all actions the Secured Party may reasonably determine to be necessary or advisable for the attachment, perfection and first priority of, and the ability of the Secured Party to enforce, the Secured Party's security interest in any and all of the Collateral, including without limitation the execution and filing of intellectual property security agreements, the notation in its corporate records of the security interest the Secured Party has in the Collateral and, in the event that the Protocol of Space Assets to the Capetown Convention on Mobile Goods is ratified by the United States and becomes effective, the Customer shall take all action required thereunder to protect and preserve the security interest of the Secured Party hereunder.
- 5. <u>Representations and Warranties Concerning Customer's Legal Status</u>. The Customer represents and warrants to the Secured Party as follows: (a) the Customer's exact legal name is Sirius Satellite Radio Inc., (b) the Customer is a Delaware corporation, (c) the Customer's organizational identification number is 52-1700207, (d) the Customer's name has not changed since January 1, 2003.
- 6. <u>Covenants Concerning Customer's Legal Status</u>. The Customer covenants with the Secured Party that without at least 30 days prior written notice it will not: (a) change its name, or (b) its type of organization, jurisdiction of organization or other legal structure.

- 7. Representations, Warranties and Covenants Concerning Collateral, etc. The Customer further represents and warrants to the Secured Party as follows: (a) the Customer is the legal owner of the Purchase Agreement and, subject to the terms and conditions of the Satellite Purchase Agreement, will hereafter become the legal owner of, or otherwise acquire rights or the power to transfer rights in, the Workin-Progress and the Deliverable Items, all of which are free from any right or claim of any Person or any adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement and any Collateral Permitted Liens and the Customer has not sold, pledged or otherwise encumbered the Collateral (other than the security interest granted hereunder and any Collateral Permitted Liens), (b) the security interest purported to be granted hereby constitutes a first priority perfected security interest in the Collateral (other than Collateral Permitted Liens); (c) there are no security interests or encumbrances of any kind on the Collateral other than Collateral Permitted Liens and (d) no filings, other than the filing of a UCC-1 financing statement in the office of the Secretary of State of Delaware are necessary to perfect the security interest in the Collateral purported to be created by this Agreement; nor is any authorization, approval or other action by, or notice to or other filing with, any Governmental Authority required for either (i) the pledge or perfection of the security interest in the Collateral or (ii) the exercise by the Secured Party of any rights or remedies in respect of the Collateral (whether specifically granted or created hereunder or provided by applicable law) other than filings under federal statutes in respect of Intellectual Property Rights (as defined in the Satellite Purchase Agreement), filings to perfect security interests under laws outside the United States, and any actions in connection with enforcement rights required under applicable export restrict
- 8. Covenants Concerning Collateral, etc. The Customer further covenants with the Secured Party as follows: (a) except for the rights of SS/L, the security interest herein granted and Collateral Permitted Liens, the Customer shall be the legal owner of the Collateral free from any right or claim of any other Person, lien, security interest or other encumbrance of any kind, and the Customer at its cost and expense shall defend the same against all claims and demands of all Persons at any time claiming the same or any interests therein adverse to the Secured Party, (b) the Customer shall not pledge, mortgage or create, or suffer to exist any right of any Person in or claim by any Person to the Collateral or any portion thereof or interest therein, or any security interest, lien or encumbrance in the Collateral or any portion thereof or interest therein in favor of any Person, other than the Secured Party and any Person granted a Collateral Permitted Lien, (c) the Customer will not assign, lease, transfer, sell or otherwise dispose, or enter into a contract or offer to assign, lease, transfer, sell or otherwise dispose, of the Collateral and (d) the Customer will give prompt written notice to the Secured Party of any change in the information set forth in Section 5 and in Section 7 and, promptly after request therefor, any other information reasonably requested by the Secured Party to perfect or continue the perfection of the security interest purported to be created by this Agreement, including without limitation providing to the Secured Party a copy of each written inventory describing the Work-in-Progress received by the Customer under Section 24.11(e) of the Satellite Purchase Agreement.
- 9. <u>Termination</u>. Upon full and indefeasible payment in cash of all Obligations (other than any contingent indemnity obligations not due and payable at the time all other Obligations have been discharged) and the termination of the Commitment of the Lender to extend credit under the Customer Credit Agreement, the security interest on the Collateral shall terminate. Upon the request and at the expense of the Customer, the Secured Party will either authorize the Customer to or it will execute any documents reasonably requested by the Customer to release of record any security interest in the Collateral created under this Agreement. Any execution and delivery of documents pursuant to this Section 9 shall be without recourse to or warranty by the Secured Party. If expenses will be or are incurred by the Secured Party, the Customer shall pay in advance or, at the option of the Secured Party, reimburse the Secured Party upon demand for all costs and out of pocket expenses, including the fees, charges and disbursements of counsel, in connection with any action under this Section 9.

- 10. Collateral Protection Expenses; Preservation of Collateral.
- 10.1 Expenses Incurred by Secured Party. In the Secured Party's reasonable discretion, if the Customer fails to do so after written notice and 30 days to cure, the Secured Party may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, maintain any of the Collateral, make repairs thereto and pay any necessary filing fees or insurance premiums. The Customer agrees to reimburse the Secured Party within 5 Business Days of demand for all expenditures so made and until such reimbursement is made by the Customer such amounts owed shall be a debt secured by the Collateral and shall bear interest in accordance with Section 19 hereof. The Secured Party shall have no obligation to the Customer to make any such expenditures, nor shall the making thereof be construed as the waiver or cure of any Event of Default.
- 10.2 Secured Party's Obligations and Duties. Anything herein to the contrary notwithstanding, the Customer shall remain obligated and liable under each contract or agreement comprised in the Collateral to be observed or performed by the Customer thereunder. The Secured Party shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Secured Party of any payment relating to any of the Collateral, nor shall the Secured Party be obligated in any manner to perform any of the obligations of the Customer under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Secured Party in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Secured Party or to which the Secured Party may be entitled at any time or times. The Secured Party's sole duty as a Secured Party with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC of the State or otherwise, shall be to deal with such Collateral in the same manner as the Secured Party deals with similar property for its own account; provided, however, that nothing in this Agreement shall be construed to limit in any way the obligations of SS/L under the Satellite Purchase Agreement.
- 11. Securities and Deposits. The Secured Party may at any time following and during the continuance of an Event of Default and notice to the Customer, at its option, transfer to itself or any nominee any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Whether or not any Obligations are due, the Secured Party (other than SS/L or its affiliates) may following and during the continuance of an Event of Default demand, sue for, collect, or make any settlement or compromise which it deems desirable with respect to any securities constituting the Collateral. Regardless of the adequacy of such Collateral or any other security for the Obligations, any deposits or other sums at any time credited by or due from the Secured Party to the Customer may at any time be applied to or set off against any of the Obligations.

- 12. Power of Attorney.
- 12.1 Appointment and Powers of Secured Party.
- (a) Subject to clause (b) hereof, the Customer hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Customer or in the Secured Party's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of the Customer, to upon the occurrence and during the continuance of an Event of Default and notice to Customer, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Collateral in such manner as is consistent with the UCC and other applicable law, including the Communications Act of 1934, as amended, and the rules and regulations promulgated by the Federal Communications Commission thereunder, and as fully and completely as though the Secured Party were the absolute owner thereof for all purposes, and to do, at the Customer's expense, at any time, or from time to time, all acts and things which the Secured Party deems necessary or useful to protect, preserve or realize upon the Collateral and the Secured Party's security interest therein, in order to effect the intent of this Agreement, all at least as fully and effectively as the Customer might do, including, without limitation, (i) the filing and prosecuting of registration and transfer applications with the appropriate federal, state, local or other agencies or authorities with respect to trademarks, copyrights and patentable inventions and processes, (ii) upon written notice to the Customer, the exercise of voting rights with respect to voting securities, which rights may be exercised, if the Secured Party so elects, with a view to causing the liquidation of assets of the issuer of any such securities, and (iii) the execution, delivery and recording, in connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral.
- (b) Notwithstanding clause (a) above, unless an Event of Default has occurred and is continuing, the Secured Party shall not exercise its rights under such power of attorney unless it firsts requests the Customer to take such action and the Customer shall have failed to do so within 30 days of any such request.
- 12.2 <u>Ratification by Customer</u>. To the extent permitted by law, the Customer hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.
- 12.3 No Duty on Secured Party. The powers conferred on the Secured Party hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Secured Party shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to the Customer for any act or failure to act, except for the Secured Party's own gross negligence or willful misconduct.

## 13. Rights and Remedies.

- (a) If an Event of Default shall have occurred and be continuing, the Secured Party, without any other notice to or demand upon the Customer shall have (in addition to all other rights and remedies provided herein or by law) the rights and remedies specified in any jurisdiction in which enforcement hereof is sought of a secured party under the UCC and any additional rights and remedies which may be provided to a secured party in any jurisdiction in which Collateral is located, including, without limitation, the right to take possession of the Collateral (subject to applicable export control restrictions and security regulations), and for that purpose the Secured Party may, so far as the Customer can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. The Secured Party may in its reasonable discretion require the Customer to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of the Customer's principal office(s) or at such other locations as the Secured Party may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Party shall give to the applicable Customer at least 10 Business Days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Customer hereby acknowledges that 10 Business Days prior written notice of such sale or sales shall be reasonable notice. In addition, the Customer waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Secured Party's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights and remedies with respect thereto.
- (b) If the Proceeds of sale, collection or other realization of or upon the Collateral are insufficient to cover the Obligations, the Customer shall remain liable for any deficiency. The Secured Party shall not incur any liability as a result of the sale of the Collateral, or any part thereof, at any private sale conducted in a commercially reasonable manner and otherwise in compliance with the UCC and applicable export control restrictions. The Customer hereby waives any claims against the Secured Party arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price that might have been obtained at a public sale or was less than the aggregate amount of the Obligations even if the Secured Party accepts the first offer received and does not offer the Collateral to more than one offeree, so long as the sale was conducted in a commercially reasonable manner. The Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent any portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or subject of widely distributed standard price quotations,) sale in accordance with the UCC, and the Secured Party shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any part of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Secured Party at such sale. The Secured Party may sell the Collateral without giving any warranties as to the Collateral and may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

- 14. Standards for Exercising Rights and Remedies. To the extent that applicable law imposes duties on the Secured Party to exercise remedies in a commercially reasonable manner, the Customer acknowledges and agrees that it is not commercially unreasonable for the Secured Party (a) to fail to incur expenses reasonably deemed significant by the Secured Party to prepare Collateral for disposition or otherwise to fail to complete raw material or Work-in-Progress into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account customers or other Persons obligated on Collateral or to fail to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account customers and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to contact other Persons, whether or not in the same business as the Customer, for expressions of interest in acquiring all or any portion of the Collateral, (f) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (g) to dispose of assets in wholesale rather than retail markets, (h) to disclaim disposition warranties, (i) after an Event of Default, to purchase insurance or credit enhancements to insure the Secured Party against risks of loss, collection or disposition of Collateral or to provide to the Secured Party a guaranteed return from the collection or disposition of Collateral, or (j) to the extent deemed appropriate by the Secured Party, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Secured Party in the collection or disposition of any of the Collateral. The Customer acknowledges that the purpose of this Section 14 is to provide non-exhaustive indications of what actions or omissions by the Secured Party would fulfill the Secured Party's duties under the UCC or other law of the State or any other relevant jurisdiction in the Secured Party's exercise of remedies against the Collateral and that other actions or omissions by the Secured Party shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section 14. Without limitation upon the foregoing, nothing contained in this Section 14 shall be construed to grant any rights to the Customer or to impose any duties on the Secured Party that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 14.
- 15. No Waiver by Secured Party, etc. The Secured Party shall not be deemed to have waived any of its rights or remedies in respect of the Obligations or the Collateral unless such waiver shall be in writing and signed by the Secured Party. No delay or omission on the part of the Secured Party in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All rights and remedies of the Secured Party with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Secured Party deems expedient.

16. <u>Waivers by Customer</u>. The Secured Party shall have no duty as to the collection or protection of the Collateral or any income therefrom, the preservation of rights against prior parties, or the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in Section 10.2.

- 17. Marshalling. The Secured Party shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, the Customer hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Secured Party's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Customer hereby irrevocably waives the benefits of all such laws.
- 18. Proceeds of Dispositions; Expenses. The Customer agrees to pay to the Secured Party on demand any and all reasonable expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Secured Party in protecting, preserving or enforcing the Secured Party's rights and remedies under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Secured Party may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations (other than any contingent indemnity obligations not due and payable at the time all other Obligations have been discharged) and the termination of the Commitment to provide Loans under the Customer Credit Agreement and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the UCC of the State, any excess shall be returned to the Customer. In the absence of final payment and satisfaction in full of all of the Obligations, the Customer shall remain liable for any deficiency.
- 19. <u>Overdue Amounts</u>. Until paid, all amounts due and payable by the Customer hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the rate of interest per annum set forth in the Customer Credit Agreement.
- 20. Collateral Subject to Communications Act. Notwithstanding any other provision of this Agreement, any foreclosure on, sale, transfer or other disposition of, or the exercise of any rights to vote or consent with respect to any of the Collateral as provided herein or any other action taken by the Secured Party hereunder shall be in compliance with the Communications Act and the rules and regulations promulgated thereunder by the Federal Communications Commission, and to the extent required thereby, subject to the prior approval of the Federal Communications Commission.

- 21. Governing Law; Consent to Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. The Customer agrees that any action or claim arising out of, or any dispute in connection with, this Agreement, any rights, remedies, obligations, or duties hereunder, or the performance or enforcement hereof or thereof, may be brought in the courts of the State or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Person, at the address and the manner provided in Section 9.09 of the Customer Credit Agreement. The Customer hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.
- 22. Waiver of Jury Trial. THE CUSTOMER WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS, REMEDIES, OBLIGATIONS, OR DUTIES HEREUNDER, OR THE PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF. Except as prohibited by law, the Customer waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Customer (i) certifies that neither the Secured Party nor any representative, agent or attorney of the Secured Party has represented, expressly or otherwise, that the Secured Party would not, in the event of litigation, seek to enforce the foregoing waivers or other waivers contained in this Agreement, and (ii) acknowledges that the Secured Party is relying upon, among other things, the waivers and certifications contained in this Section 22.
- 23. <u>Miscellaneous</u>. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Customer and its respective successors and assigns, and shall inure to the benefit of the Secured Party and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Customer acknowledges receipt of a copy of this Agreement.

<b>IN WITNESS WHEREOF</b> , in above written.	tending to be legally bound, the Customer has caused this Agreement to be duly executed as of the date first		
	SIRIUS SATELLITE RADIO INC.		
	By: Name: Title:		
	Accepted:		
	SPACE SYSTEMS/LORAL, INC.		
	By:		

Name: Richard Mastoloni

Title: Vice President and Treasurer

#### EXHIBIT D

#### FORM OF SUBSIDIARY GUARANTEE

GUARANTEE AGREEMENT (this "Guarantee") dated as of May 31, 2006, by the undersigned guarantors (each a "Guarantor" and collectively the "Guarantors", which term shall include on any date all Other Guarantors theretofore becoming a party to this Guarantee as below provided), in favor of the Initial Lender referred to below and the other lenders, if any, from time to time (each a "Lender" and collectively the "Lenders") under that certain Customer Credit Agreement, dated as of May 31, 2006 (as the same may be supplemented or amended from time to time, the "Customer Credit Agreement" and terms defined therein and not otherwise defined herein are used herein as so defined) entered into by Sirius Satellite Radio Inc. (the "Customer") and Space Systems/Loral, Inc. (the "Initial Lender" and, together with the other Lenders and their respective successors and assigns, sometimes individually an "Obligee" and collectively the "Obligees").

WHEREAS, it is a condition precedent to the obligation of the Initial Lender to make Loans under the Customer Credit Agreement that certain Material Subsidiaries of the Customer existing on the date hereof execute and deliver this Guarantee or a separate Guarantee substantially in the form of this Guarantee; and

WHEREAS, the Customer is also obligated under Section 8.05 of the Customer Credit Agreement to cause certain other Material Subsidiaries of the Customer to become a party to this Guarantee or execute and deliver a separate guarantee substantially in the form of this Guarantee (as to any Guarantor party to this Guarantee, the other Guarantors party to this Guarantee and any of such other guarantees are sometimes collectively the "Other Guarantors" and such other guarantees are sometimes collectively the "Other Guarantees"); and

WHEREAS, the Guarantors are Material Subsidiaries of the Customer and, as such, will benefit by virtue of the financial accommodations extended to the Customer by the Lenders.

NOW, THEREFORE, in consideration of the foregoing, the Guarantors hereby jointly and severally agree as follows:

## 1. GUARANTEE.

## 1.1 Obligations Guaranteed

The Guarantors jointly and severally hereby absolutely, unconditionally and irrevocably guarantee, as primary obligor and not merely as sureties,

- (i) the punctual payment when due, whether at stated maturity, by prepayment, by acceleration or otherwise, of all obligations of the Customer arising under the Customer Credit Agreement, the Notes and the other Loan Documents, whether for principal, interest (including without limitation, to the extent permitted by law, interest on any overdue principal and interest at the rates specified in the Notes and interest accruing or becoming owing both prior to and subsequent to the commencement of any bankruptcy, insolvency, examinership, reorganization, moratorium or similar proceeding involving the Customer), fees, expenses, indemnification or otherwise, and
- (ii) the due and punctual performance and observance by the Customer of all covenants, agreements and conditions on its part to be performed and observed under the Customer Credit Agreement, the Notes and the other Loan Documents.

(all such obligations are called the "Guaranteed Obligations").

Without limiting the generality of the foregoing, this Guarantee guarantees, to the extent provided herein, the payment of all amounts which constitute part of the Guaranteed Obligations and would be owed by any other Person to any Obligee but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, insolvency, examinership, reorganization, moratorium or similar proceeding involving such Person.

#### 1.2 Character of Guarantee

This Guarantee constitutes a present and continuing guarantee of payment and not of collection and each Guarantor guarantees that the Guaranteed Obligations will be paid and performed strictly in accordance with the terms of the Customer Credit Agreement and the Notes, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Customer with respect thereto. The obligations of each Guarantor under this Guarantee are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guarantee, irrespective of whether any action is brought against the Customer, any Other Guarantor or any other Person liable for the Guaranteed Obligations or whether the Customer, any Other Guarantor or any other such Person is joined in any such action or actions. To the extent permitted by law, the liability of each Guarantor under this Guarantee shall be primary, absolute, irrevocable, and unconditional irrespective of:

- (iii) any lack of validity or enforceability of any Guaranteed Obligation, the Customer Credit Agreement, the Notes, any Other Guarantee or any agreement or instrument relating thereto;
- (iv) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Customer Credit Agreement, the Notes or any Other Guarantee;
- (v) any taking, exchange, release or non-perfection of any collateral, or any taking, release or amendment or waiver of or consent to departure by any other Person liable, or any other guarantee, for all or any of the Guaranteed Obligations;
- (vi) any manner of application of collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any collateral or any other assets of the Customer or any Other Guarantor;
  - (vii) any change, restructuring or termination of the corporate structure or existence of the Customer or any Other Guarantor; or
- (viii) any other circumstance (including without limitation any statute of limitations) that might otherwise constitute a defense, offset or counterclaim available to, or a discharge of, the Customer or any Other Guarantor.

If any event permitting the acceleration of the maturity of the principal amount of the Notes shall at any time have occurred and be continuing and such acceleration (and the effect thereof on the Guaranteed Obligations) shall at such time be prevented by reason of the pendency against the Customer or any other Person of a case or proceeding under a bankruptcy or insolvency law, each Guarantor agrees that, for purposes of this Guarantee and such Guarantor's obligations under this Guarantee, the maturity of the principal amount of the Notes shall be deemed to have been accelerated (with a corresponding effect on the Guaranteed Obligations) with the same effect as if the Lenders had accelerated the Notes in accordance with the terms of the Agreement, and such Guarantor shall forthwith pay such principal amount, any interest thereon and any other amounts guaranteed hereunder without further notice or demand.

## 1.3 Waivers

Each Guarantor hereby irrevocably waives, to the extent permitted by applicable law:

- (ix) promptness, diligence, presentment, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Guarantee;
- (x) any requirement that any Obligee or any other Person protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against the Customer or any other Person or any collateral;
  - (xi) any defense, offset or counterclaim arising by reason of any claim or defense based upon any action by any Obligee;
- (xii) any duty on the part of any Obligee to disclose to such Guarantor any matter, fact or thing relating to the business, operation or condition of any Person and its assets now known or hereafter known by such Obligee; and
- (xiii) any rights by which it might be entitled to require suit on an accrued right of action in respect of any of the Guaranteed Obligations or require suit against the Customer or such Guarantor or any other Person.

## 2. SUBROGATION, ETC.

## 2.1 Subrogation and Contribution

No Guarantor shall assert, enforce, or otherwise exercise (a) any right of subrogation to any of the rights, remedies, powers, privileges or Liens of any Obligee or any other beneficiary against the Customer or any other Guarantor on the Guaranteed Obligations or any collateral or other security, or (b) any right of recourse, reimbursement, contribution, indemnification, or similar right against the Customer or any other Guarantor in respect of the Guaranteed Obligations, and each Guarantor hereby waives any and all of the foregoing rights, remedies, powers, privileges and the benefit of, and any right to participate in, any collateral or other security given to any Obligee or any other beneficiary to secure payment of the Guaranteed Obligations, in each case, until such time as the Guaranteed Obligations have been indefeasibly paid in full.

## 2.2 Reinstatement

Each Guaranter agrees that its obligations under this Guarantee shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Customer or one or more Other Guarantors is rescinded or must be otherwise restored by any Obligee, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid.

## 2.3 Separate Claims, etc.

Each default in the payment or performance of any of the Guaranteed Obligations shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs. Each Guarantor will from time to time deliver, upon the reasonable request of any Obligee, a satisfactory acknowledgment of such Guarantor's continuing liability hereunder to the extent provided herein.

#### 3. REPRESENTATIONS AND WARRANTIES.

Each Guarantor represents and warrants as to itself as follows:

- (xiv) Such Guarantor is a company or other legal entity duly organized and validly existing in good standing under the laws of the jurisdiction in which it is organized and has all requisite power and authority to execute, deliver and perform its obligations under this Guarantee.
- (xv) The execution and delivery of this Guarantee has been duly authorized by all necessary action on the part of such Guaranter and this Guarantee has been executed and delivered by one or more duly authorized officers of such Guarantor. This Guarantee constitutes a legal, valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms, except that the enforceability hereof may be limited by applicable bankruptcy, reorganization, arrangement, insolvency, moratorium or similar laws affecting the enforceability of creditors' rights generally and subject to the availability of equitable remedies.
  - (xvi) The execution, delivery and performance by such Guaranter of this Guarantee does not and will not
  - (A) violate any applicable law or regulation of any Governmental Authority, or official or judicial order of a court of competent jurisdiction binding on such Guarantor or any of its properties;
    - (B) conflict with its Certificate of Incorporation or other constitutive documents of such Guarantor;
  - (C) conflict with any agreement or document to which such Guarantor is a party or that is binding upon any such Guarantor or any of its properties; or
  - (D) result in the creation or imposition of any Lien on any of the properties of any such Guarantor pursuant to the provisions of any agreement or document.

(xvii) Such Guarantor is executing and delivering this Guarantee and incurring its obligations hereunder for its own benefit and for the purpose of its business and such Guarantor is able to pay its debts and will not become unable to pay its debts as a consequence of incurring such obligations.

(xviii) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or threatened against or affecting the Customer or such Guarantors (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement, any other Loan Document or the Transactions

#### 4. TAXES

### 4.1 Payments Free of Taxes

Any and all payments by or on account of any obligation of any Guarantor hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; PROVIDED that if a Guarantor shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Guarantor shall make such deductions and (iii) the Guarantor shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

### 4.2 <u>Indemnification by the Guarantor</u>

The Guarantors shall, jointly and severally, indemnify the Lender, within 10 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Guarantors by the Lender shall be conclusive absent manifest error.

## 4.3 Evidence of Payments

As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Guarantor to a Governmental Authority, such Guarantor shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

#### 5. MISCELLANEOUS.

## 5.1 Amendments

No amendment or waiver of any provision of this Guarantee and no consent to any departure by the Guarantors therefrom shall in any event be effective unless the same shall be in writing and signed by all Obligees.

## 5.2 Notices

All notices and other communications provided for hereunder shall be in writing, shall be hand delivered, sent by confirmed facsimile transmission (hard copy to be provided by overnight courier on the date of such transmission) or sent by an overnight courier of international standing and shall be addressed:

- (xix) if to a Guarantor, at the address set forth for such Guarantor in Annex 1 hereto, or at such other address as such Guarantor may hereafter designate by notice to each Obligee, or
- (xx) if to the Initial Lender, at the address as set forth in Section 9.01 of the Customer Credit Agreement or at such other address as such Lender may hereafter designate by notice to the Guarantors, or
  - (xxi) if to any other Lender, at the address such Lender may hereafter designate by notice to the Guarantors.

## 5.3 Governing Law

This Guarantee shall be governed by, and construed and enforced in accordance with, the law of the State of New York, United States of America, excluding choice-of-law principles of the laws of such State that would require the application of the laws of a jurisdiction other than such State.

#### 5.4 No Waiver

No failure on the part of any Obligee to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

## 5.5 Jurisdiction; Service Of Process; Waiver of Jury Trial.

- (c) Each Guarantor irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Guarantee. To the fullest extent it may effectively do so under applicable law, each Guarantor irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the in personam jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- (d) Each Guarantor agrees, to the fullest extent it may effectively do so under applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in paragraph (a) of this Section 5.5 brought in any such court shall be conclusive and binding upon it, subject to rights of appeal and may be enforced in the courts of the United States of America or the State of New York (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.
- (e) Each Guarantor consents to process being served in any suit, action or proceeding of the nature referred to in paragraph (a) of this Section 5.5 by mailing a copy thereof by registered or certified or priority mail, postage prepaid, return receipt requested, or delivering a copy thereof in the manner for delivery of notices specified in Section 5.2, to the Customer at its address set forth in Section 9.01(a) of the Customer Credit Agreement or at such other address of the Customer as it shall have provided to the Lenders in accordance with such Section 9.01(a), as such Guarantor's agent for the purpose of accepting service of any process in the State of new York. Each Guarantor agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the full extent permitted by law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any overnight courier of international standing.
- (f) Nothing in this Section 5.5 shall affect the right of any Obligee to serve process in any manner permitted by law, or limit any right that the Obligees may have to bring proceedings against any Guarantor in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.
- (g) EACH GUARANTOR WAIVES TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS GUARANTEE OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH.

## 5.6 Severability

In case any one or more of the provisions contained in this Guarantee, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.

## 5.7 Counterparts

This Guarantee may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the Guarantors.

IN WITNESS WHEREOF each Guarantor has caused this Guarantee to be executed on its behalf as of the date first above written.

[GUARANTOR]		[GUARANTOR]	
Ву	Title	Ву	Title
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#### CERTIFICATION OF CHIEF EXECUTIVE OFFICER

- I, Mel Karmazin, 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 June 30, 2006;
- 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any changes in the registrant's internal controls over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ MEL KARMAZIN

Mel Karmazin Chief Executive Officer (Principal Executive Officer)

August 9, 2006

#### 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 June 30, 2006;
- 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any changes in the registrant's internal controls over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ DAVID J. FREAR

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

August 9, 2006

#### 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 ended June 30, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mel Karmazin, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ MEL KARMAZIN

Mel Karmazin Chief Executive Officer (Principal Executive Officer)

August 9, 2006

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 ended June 30, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David J. Frear, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ DAVID J. FREAR

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

August 9, 2006

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.