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

FORM 10-Q

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

For the quarterly period ended September 30, 2009

OR

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

For the transition period from _____ to _____

COMMISSION FILE NUMBER 001-34295

SIRIUS XM RADIO INC.

(Exact name of registrant as specified in its charter)

Delaware	**52-1700207**
(State or other jurisdiction of incorporation of organization)	**(I.R.S. Employer Identification Number)**
1221 Avenue of the Americas, 36th Floor New York, New York	
(Address of principal executive offices)	**10020 (Zip Code)**

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

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 has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

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

Large accelerated filer ☑	Accelerated filer ☐	Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☐

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

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

(Class)	**(Outstanding as of October 31, 2009)**
COMMON STOCK, $0.001 PAR VALUE	**3,858,653,816 SHARES**

SIRIUS XM RADIO INC. AND SUBSIDIARIES
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PART I: FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

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

(in thousands, except per share data)	For the Three Months Ended September 30, 2009	For the Three Months Ended September 30, 2008	For the Nine Months Ended September 30, 2009	For the Nine Months Ended September 30, 2008
Revenue:				
Subscriber revenue, including effects of rebates	$ 578,304	$ 458,237	$ 1,699,455	$ 980,396
Advertising revenue, net of agency fees	12,418	14,674	37,287	31,413
Equipment revenue	10,506	11,271	31,343	25,290
Other revenue	17,428	4,261	28,379	4,710
Total revenue	618,656	488,443	1,796,464	1,041,809
Operating expenses (depreciation and amortization shown separately below) (1):				
Cost of services:				
Satellite and transmission	19,542	19,526	59,435	34,800
Programming and content	78,315	106,037	230,825	222,975
Revenue share and royalties	100,558	85,592	296,855	177,635
Customer service and billing	56,529	47,432	175,570	97,218
Cost of equipment	11,944	13,773	27,988	28,007
Sales and marketing	52,530	63,637	152,647	151,237
Subscriber acquisition costs	90,054	86,616	230,773	257,832
General and administrative	56,923	57,310	182,953	148,555
Engineering, design and development	11,252	10,434	32,975	28,091
Impairment of goodwill	—	4,750,859	—	4,750,859
Depreciation and amortization	72,100	66,774	231,624	120,793
Restructuring, impairments and related costs	2,554	7,430	30,167	7,457
Total operating expenses	552,301	5,315,420	1,651,812	6,025,459
Income (loss) from operations	66,355	(4,826,977)	144,652	(4,983,650)
Other income (expense):				
Interest and investment income	962	4,940	2,602	9,167
Interest expense, net of amounts capitalized	(78,527)	(49,216)	(240,062)	(83,636)
Loss on extinguishment of debt and credit facilities, net	(138,053)	—	(263,767)	—
(Loss) gain on investments	(58)	(3,089)	457	(3,089)
Other income (expense)	1,246	(3,870)	2,505	(3,935)
Total other expense	(214,430)	(51,235)	(498,265)	(81,493)
Loss before income taxes	(148,075)	(4,878,212)	(353,613)	(5,065,143)
Income tax expense	(1,115)	(1,215)	(3,344)	(2,301)
Net loss	(149,190)	(4,879,427)	(356,957)	(5,067,444)
Preferred stock beneficial conversion feature	—	—	(186,188)	—
Net loss attributable to common stockholders	$ (149,190)	$ (4,879,427)	$ (543,145)	$ (5,067,444)
Net loss per common share (basic and diluted)	$ (0.04)	$ (1.93)	$ (0.15)	$ (2.76)
Weighted average common shares outstanding (basic and diluted)	3,621,062	2,527,692	3,577,587	1,836,834

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

Satellite and transmission	$ 1,086	$ 1,331	$ 3,020	$ 2,887
Programming and content	3,037	3,529	7,418	7,477
Customer service and billing	734	596	2,052	1,137
Sales and marketing	2,722	3,672	10,081	11,376
Subscriber acquisition costs	—	—	—	14
General and administrative	8,442	12,904	40,141	36,359
Engineering, design and development	1,653	1,973	4,841	4,167
Total share-based payment expense	$ 17,674	$ 24,005	$ 67,553	$ 63,417

See accompanying Notes to the unaudited consolidated financial statements.

SIRIUS XM RADIO INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share data)	September 30, 2009 (Unaudited)	December 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 380,372	$ 380,446
Accounts receivable, net of allowance for doubtful accounts of $9,872 and $10,860, respectively	87,148	102,024
Receivables from distributors	41,755	45,950
Inventory, net	20,996	24,462
Prepaid expenses	107,350	67,203
Related party current assets	109,172	114,177
Other current assets	64,317	58,744
Total current assets	811,110	793,006
Property and equipment, net	1,694,235	1,703,476
FCC licenses	2,083,654	2,083,654
Restricted investments	3,400	141,250
Deferred financing fees, net	35,889	40,156
Intangible assets, net	629,288	688,671
Goodwill	1,834,856	1,834,856
Related party long-term assets	114,073	124,607
Other long-term assets	62,438	81,019
Total assets	$ 7,268,943	$ 7,490,695
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	$ 521,621	$ 642,820
Accrued interest	65,537	76,463
Current portion of deferred revenue	987,177	985,180
Current portion of deferred credit on executory contracts	247,566	234,774
Current maturities of long-term debt	103,674	399,726
Related party current liabilities	90,869	68,373
Total current liabilities	2,016,444	2,407,336
Deferred revenue	285,488	247,889
Deferred credit on executory contracts	851,955	1,037,190
Long-term debt	2,874,391	2,851,740
Long-term related party debt	265,659	—
Deferred tax liability	906,428	894,453
Related party long-term liabilities	21,928	—
Other long-term liabilities	39,005	43,550
Total liabilities	7,261,298	7,482,158
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Preferred stock, par value $0.001; 50,000,000 authorized at September 30, 2009 and December 31, 2008:		
Series A convertible preferred stock (liquidation preference of $51,370 at September 30, 2009 and December 31, 2008); 24,808,959 shares issued and outstanding at September 30, 2009 and December 31, 2008	25	25
Convertible perpetual preferred stock, series B (liquidation preference of $13 and $0 at September 30, 2009 and December 31, 2008, respectively); 12,500,000 and zero shares issued and outstanding at September 30, 2009 and December 31, 2008, respectively	13	—
Convertible preferred stock, series C junior; no shares issued and outstanding at September 30, 2009 and December 31, 2008	—	—
Common stock, par value $0.001; 9,000,000,000 and 8,000,000,000 shares authorized at September 30, 2009 and December 31, 2008, respectively; 3,858,186,839 and 3,651,765,837 shares issued and outstanding at September 30, 2009 and December 31, 2008, respectively	3,858	3,652
Accumulated other comprehensive loss, net of tax	(6,598)	(7,871)
Additional paid-in capital	10,265,752	9,724,991
Accumulated deficit	(10,255,405)	(9,712,260)
Total stockholders' equity	7,645	8,537
Total liabilities and stockholders' equity	$ 7,268,943	$ 7,490,695

See accompanying Notes to the unaudited consolidated financial statements.

SIRIUS XM RADIO INC. AND SUBSIDIARIES

UNAUDITED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND COMPREHENSIVE LOSS

(in thousands, except share and per share data)	Series A Convertible Preferred Stock Shares	Series A Convertible Preferred Stock Amount	Series B Convertible Preferred Stock Shares	Series B Convertible Preferred Stock Amount	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
Balance at December 31, 2008	24,808,959	$ 25	—	$ —	3,651,765,837	$ 3,652	$ 9,724,991	$ (9,712,260)	$ (7,871)	$ 8,537
Net loss								(356,957)		(356,957)
Other comprehensive loss:										
Unrealized gain on available-for-sale securities, net of tax	—	—	—	—	—	—	—	—	579	579
Foreign currency translation adjustment, net of tax	—	—	—	—	—	—	—	—	694	694
Total comprehensive loss	—	—	—	—	—	—	—	—	—	(355,684)
Issuance of preferred stock — related party, net of issuance costs	—	—	12,500,000	13	—	—	410,179	(186,188)	—	224,004
Issuance of common stock to employees and employee benefit plans, net of forfeitures	—	—	—	—	8,520,957	9	1,917	—	—	1,926
Structuring fee on 10% Senior PIK Secured Notes due 2011	—	—	—	—	59,178,819	59	5,859	—	—	5,918
Share-based payment expense	—	—	—	—	91,666	—	56,500	—	—	56,500
Returned shares under share borrow agreements	—	—	—	—	(60,000,000)	(60)	60	—	—	—
Issuance of restricted stock units in satisfaction of accrued compensation	—	—	—	—	59,229,560	59	31,221	—	—	31,280
Exchange of 2½% Convertible Notes due 2009, including accrued interest	—	—	—	—	139,400,000	139	35,025	—	—	35,164
Balance at September 30, 2009	24,808,959	$ 25	12,500,000	$ 13	3,858,186,839	$ 3,858	$ 10,265,752	$ (10,255,405)	$ (6,598)	$ 7,645

See accompanying Notes to the unaudited consolidated financial statements.

SIRIUS XM RADIO INC. AND SUBSIDIARIES

UNAUDITED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)	For the Nine Months Ended September 30, 2009	2008
Cash flows from operating activities:		
Net loss	$ (356,957)	$ (5,067,444)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	231,624	114,923
Impairment of goodwill	—	4,750,859
Non-cash interest expense, net of amortization of premium	32,909	(1,933)
Provision for doubtful accounts	23,879	11,125
Amortization of deferred income related to equity method investment	(2,082)	(471)
Loss on extinguishment of debt and credit facilities, net	263,767	—
Restructuring, impairments and related costs	26,954	—
Loss on disposal of assets	—	4,879
Loss on investments	10,967	3,089
Share-based payment expense	67,553	63,417
Deferred income taxes	3,344	2,301
Other non-cash purchase price adjustments	(142,487)	(23,770)
Other	—	1,643
Changes in operating assets and liabilities:		
Accounts receivable	(9,002)	1,575
Inventory	3,466	2,952
Receivables from distributors	4,195	9,595
Related party assets	15,539	(1,357)
Prepaid expenses and other current assets	30,188	3,528
Other long-term assets	64,034	37,110
Accounts payable and accrued expenses	(68,135)	(122,969)
Accrued interest	(6,600)	(2,810)
Deferred revenue	11,569	(4,577)
Related party liabilities	44,424	3,315
Other long-term liabilities	3,958	(1,972)
Net cash provided by (used in) operating activities	253,107	(216,992)
Cash flows from investing activities:		
Additions to property and equipment	(217,335)	(102,705)
Sales of property and equipment	—	105
Purchases of restricted and other investments	—	(3,000)
Acquisition of acquired entity cash	—	819,521
Merger related costs	—	(13,047)
Sale of restricted and other investments	—	65,642
Net cash (used in) provided by investing activities	(217,335)	766,516
Cash flows from financing activities:		
Proceeds from exercise of warrants and stock options	—	471
Preferred stock issuance costs, net	(3,712)	—
Long-term borrowings, net	579,936	533,941
Related party long-term borrowings, net	364,964	—
Short-term financings	2,220	—
Payment of premiums on redemption of debt	(17,075)	(18,693)
Payments to minority interest holder	—	(61,880)
Repayment of long-term borrowings	(610,932)	(1,082,428)
Repayment of related party long-term borrowings	(351,247)	—
Other	—	(98)
Net cash used in financing activities	(35,846)	(628,687)
Net decrease in cash and cash equivalents	(74)	(79,163)
Cash and cash equivalents at beginning of period	380,446	438,820
Cash and cash equivalents at end of period	$ 380,372	$ 359,657

(in thousands)	For the Nine Months Ended September 30, 2009	2008
Supplemental Disclosure of Cash and Non-Cash Flow Information		
Cash paid during the period for:		
Interest, net of amounts capitalized	$ 211,143	$ 91,309
Non-cash investing and financing activities:		
Share-based payments in satisfaction of accrued compensation	31,280	8,729
Common stock issued in exchange of 3½% Convertible Notes due 2008, including accrued interest	—	33,502
Common stock issued in exchange of 2½% Convertible Notes due 2009, including accrued interest	35,164	—
Structuring fee on 10% Senior PIK Secured Notes due 2011	5,918	—
Preferred stock issued to Liberty Media	227,716	—
Release of restricted investments	138,000	—
Equity issued in the acquisition of XM	—	5,784,976

See accompanying Notes to the unaudited consolidated financial statements.

SIRIUS XM RADIO INC. AND SUBSIDIARIES

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS
(Dollar amounts in thousands, unless otherwise stated)

(1) Business

We broadcast our music, sports, news, talk, entertainment, traffic and weather channels in the United States for a subscription fee through our proprietary satellite radio systems — the SIRIUS system and the XM system. On July 28, 2008, our wholly owned subsidiary, Vernon Merger Corporation, merged (the "Merger") with and into XM Satellite Radio Holdings Inc. and, as a result, XM Satellite Radio Holdings Inc. is now our wholly owned subsidiary. The SIRIUS system consists of four in-orbit satellites, over 125 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. The XM system consists of four in-orbit satellites, over 650 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. Subscribers can also receive certain of our music and other channels over the Internet.

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

Our subscriber totals include subscribers under our regular pricing plans; discounted pricing plans; subscribers that have prepaid, including payments either made or due from automakers and dealers for prepaid subscriptions included in the sale or lease price of a vehicle; certain radios activated for daily rental fleet programs; subscribers to SIRIUS Internet Radio and XM Radio Online, our Internet services; and certain subscribers to our weather, traffic, data and video services.

Our primary source of revenue is subscription fees, with most of our customers subscribing on an annual, semi-annual, quarterly or monthly basis. We offer discounts for prepaid and long-term subscriptions as well as discounts for multiple subscriptions. We also derive revenue from activation fees, the sale of advertising on select non-music channels, the direct sale of satellite radios, components and accessories, and other ancillary services, such as our Backseat TV, data and weather services. In August 2009, we began charging our subscribers a U.S. Music Royalty Fee (the "MRF").

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

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

Unless otherwise indicated,

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

(2) Principles of Consolidation and Basis of Presentation

Principles of Consolidation

The accompanying unaudited consolidated financial statements of Sirius XM Radio Inc. and subsidiaries have been prepared in accordance with U.S. generally accepted accounting principles, the instructions to Form 10-Q and Article 10 of Regulation S-X of the United States Securities and Exchange Commission ("SEC") 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.

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

Basis of Presentation

In presenting unaudited consolidated financial statements, management makes estimates and assumptions that affect the amounts reported and related disclosures. Additionally, estimates were used when recording the fair values of our assets acquired and liabilities assumed in the Merger. Estimates, by their nature, are based on judgment and available information. Actual results could differ from those estimates. In the opinion of management, all normal recurring adjustments necessary for a fair presentation of our unaudited consolidated financial statements as of September 30, 2009, and for the three and nine months ended September 30, 2009 and 2008, have been made.

Interim results are not necessarily indicative of the results that may be expected for a full year. This Quarterly Report on Form 10-Q should be read together with our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the SEC on March 10, 2009.

We have evaluated events subsequent to the balance sheet date and prior to filing of this Quarterly Report on Form 10-Q for the quarter ended September 30, 2009 through November 5, 2009 and determined there have not been any events that have occurred that would require adjustment to our unaudited consolidated financial statements.

(3) Summary of Significant Accounting Policies

Use of Estimates

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

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

Inventory

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

Inventory, net, consists of the following:

	September 30, 2009	December 31, 2008
Raw materials	$ 15,995	$ 11,648
Finished goods	30,920	38,323
Allowance for obsolescence	(25,919)	(25,509)
Total inventory, net	$ 20,996	$ 24,462

Fair Value of Financial Instruments

The fair value of a financial instrument is the amount at which the instrument could be exchanged in an orderly transaction between market participants to sell the asset or transfer the liability. As of September 30, 2009 and December 31, 2008, we have determined that the carrying amounts of cash and cash equivalents, accounts and other receivables, and accounts payable approximate fair value due to the short-term nature of these instruments.

The fair value of our long-term debt is determined by either (i) estimating the discounted future cash flows of each instrument at rates currently offered to us for similar debt instruments of comparable maturities, or (ii) quoted market prices at the reporting date for the traded debt securities. As of September 30, 2009 and December 31, 2008, the carrying value of our long-term debt was $3,243,724 and $3,251,466, respectively; and the fair value approximated $3,130,837 and $1,211,613, respectively.

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

Reclassifications

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

Recent Accounting Pronouncements

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

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

In June 2009, the FASB issued Statement No. 167, *Amendments to FASB Interpretation No. 46(R)*, to require an analysis to determine whether our variable interest(s) give us a controlling financial interest in a variable interest entity. Statement 167 has not been incorporated into ASC and is effective for fiscal years beginning after November 15, 2009. We are currently evaluating the impact, if any, the adoption of this guidance will have on our consolidated results of operations and financial position.

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

In July 2009, the FASB proposed an update to ASC 470 to incorporate the previously ratified EITF No. 09-1, *Accounting for Own-Share Lending Arrangements in Contemplation of Convertible Debt Issuance*, into the ASC. This proposed standard would require share-lending arrangements in an entity's own shares to be initially measured at fair value and treated as an issuance cost, excluded from basic and diluted earnings per share, and recognize a charge to earnings if it becomes probable the counterparty will default on the arrangement. This guidance would be effective for fiscal years beginning on or after December 15, 2009, and retrospective application for all arrangements outstanding as of the adoption date would be required. We are evaluating the impact that adoption of this proposed guidance would have on our consolidated results of operations and financial position.

(4) Goodwill

We allocated the consideration paid in connection with the Merger to the fair value of acquired assets and assumed liabilities, respectively, and in 2008 recorded goodwill in the amount of $6,601,046. During 2008, we recorded an impairment charge of $4,766,190, of which $4,750,859 was recognized as of September 30, 2008, resulting in a carrying value of $1,834,856 at December 31, 2008. There has not been any change in the carrying value of goodwill during 2009.

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

(5) Intangible Assets

Intangible assets consisted of the following:

	Weighted Average Useful Lives	September 30, 2009 Gross Carrying Value	September 30, 2009 Accumulated Amortization	September 30, 2009 Net Carrying Value	December 31, 2008 Gross Carrying Value	December 31, 2008 Accumulated Amortization	December 31, 2008 Net Carrying Value
Indefinite life intangible assets							
FCC licenses	Indefinite	$ 2,083,654	$ —	$ 2,083,654	$ 2,083,654	$ —	$ 2,083,654
Trademark	Indefinite	250,000	—	250,000	250,000	—	250,000
Definite life intangible assets							
Subscriber relationships	9 years	$ 380,000	$ (76,670)	$ 303,330	$ 380,000	$ (29,226)	$ 350,774
Proprietary software	6 years	16,552	(6,020)	10,532	16,552	(2,285)	14,267
Developed technology	10 years	2,000	(233)	1,767	2,000	(83)	1,917
Licensing agreements	9.1 years	75,000	(11,452)	63,548	75,000	(4,090)	70,910
Leasehold interests	7.4 years	132	(21)	111	908	(105)	803
Total intangible assets		$ 2,807,338	$ (94,396)	$ 2,712,942	$ 2,808,114	$ (35,789)	$ 2,772,325

Indefinite Life Intangible Assets

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

We hold FCC licenses to operate our satellite digital audio radio service and provide ancillary services. SIRIUS' FCC license for its FM-1, FM-2 and FM-3 satellites (and a ground spare FM-4) expires in 2010, the FCC license for its FM-5 satellite expires in 2017 and the FCC license for its FM-6 satellite will expire eight years after SIRIUS certifies the satellite has been successfully launched and put into operation. XM Holdings' FCC licenses for its satellites expire in 2013 and 2014. Prior to the expirations, we will be required to apply for a renewal of our FCC licenses. The renewal and extension of our licenses is reasonably certain at minimal cost which is expensed as incurred. The FCC licenses authorize us to use the broadcast spectrum, which is a renewable, reusable resource that does not deplete or exhaust over time.

In connection with the Merger, $250,000 of the purchase price was allocated to the XM trademark. As of September 30, 2009, there are no legal, regulatory or contractual limitations associated with the XM trademark.

We evaluate our indefinite life intangible assets for impairment on an annual basis During the three and nine months ended September 30, 2009, no impairment loss was recorded for intangible assets with indefinite lives.

Definite Life Intangible Assets

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

Amortization expense was $18,648 and $9,232 for the three months ended September 30, 2009 and 2008, respectively, and $58,759 and $9,232 for the nine months ended September 30, 2009 and 2008, respectively. Expected amortization expense for each of the fiscal years through December 31, 2013 and for periods thereafter is as follows:

Year ending December 31,	Amount
Remaining 2009	$ 17,827
2010	65,916
2011	58,850
2012	53,420
2013	47,097
Thereafter	136,178
Total definite life intangibles, net	$ 379,288

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

(6) Subscriber Revenue

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

Subscriber revenue consists of the following:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Subscription fees	$ 573,611	$ 453,540	$ 1,683,568	$ 963,454
Activation fees	5,171	4,920	16,929	17,271
Effect of rebates	(478)	(223)	(1,042)	(329)
Total subscriber revenue	$ 578,304	$ 458,237	$ 1,699,455	$ 980,396

(7) Interest Costs

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

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Interest costs charged to expense	$ 78,527	$ 49,216	$ 240,062	$ 83,636
Interest costs capitalized	12,742	7,791	47,272	14,340
Total interest costs incurred	$ 91,269	$ 57,007	$ 287,334	$ 97,976

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

(8) Property and Equipment

Property and equipment, net, consists of the following:

	September 30, 2009	December 31, 2008
Satellite system	$ 1,664,286	$ 1,414,625
Terrestrial repeater network	108,698	109,228
Leasehold improvements	43,033	42,878
Broadcast studio equipment	49,818	49,186
Capitalized software and hardware	138,174	132,555
Satellite telemetry, tracking and control facilities	56,013	56,217
Furniture, fixtures, equipment and other	59,804	57,995
Land	38,411	38,411
Building	56,322	56,392
Construction in progress	379,748	474,716
Total property and equipment	2,594,307	2,432,203
Accumulated depreciation and amortization	(900,072)	(728,727)
Property and equipment, net	$ 1,694,235	$ 1,703,476

	September 30, 2009	December 31, 2008
Satellite system	$ 353,938	$ 449,129
Terrestrial repeater network	19,067	19,070
Leasehold improvements	—	—
Other	6,743	6,517
Construction in progress	$ 379,748	$ 474,716

Depreciation and amortization expense on property and equipment was $53,452 and $57,542 for the three months ended September 30, 2009 and 2008, respectively, and $172,865 and $111,561 for the nine months ended September 30, 2009 and 2008, respectively.

Satellites

SIRIUS' initial three orbiting satellites were successfully launched in 2000. Our spare SIRIUS satellite was delivered to ground storage in 2002. SIRIUS' three-satellite constellation and terrestrial repeater network were placed into service in 2002. On June 30, 2009, SIRIUS launched a satellite into a geostationary orbit and placed it into service in August 2009 along with SIRIUS' other three orbiting satellites.

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

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

Space Systems/Loral has constructed a fifth satellite, XM-5, for use in the XM system. In 2006, XM entered into an agreement with Sea Launch to secure a launch for XM-5. In June 2009, Sea Launch filed for bankruptcy protection under Title 11 of the United States Code and as a result, XM recorded a charge of $24,196 to Restructuring, impairments and related costs in our unaudited consolidated statements of operations for amounts previously paid, including capitalized interest. In October 2009, XM Holdings terminated its satellite launch agreement with Sea Launch with the consent of the Bankruptcy Court. In October 2009, we entered into an agreement with ILS to secure a satellite launch for XM-5 on a Proton rocket. We currently expect to launch XM-5 in the second or third quarter of 2010.

SIRIUS XM RADIO INC. AND SUBSIDIARIES
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(9) Related Party Transactions

Liberty Media

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

Investment Agreement

On February 17, 2009, we entered into an Investment Agreement (the "Investment Agreement") with Liberty Media. Pursuant to the Investment Agreement, we agreed to issue to Liberty Radio, LLC 12,500,000 shares of Series B Preferred Stock with a liquidation preference of $0.001 per share in partial consideration for certain loan investments. The Series B Preferred Stock was issued on March 6, 2009.

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

The holder of our Series B Preferred Stock is entitled to appoint a number of directors to our board of directors proportionate to its ownership levels from time to time.

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

Loan Investments

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

On February 17, 2009, XM entered into a Credit Agreement with Liberty Media Corporation, as administrative agent and collateral agent, and Liberty Media, LLC, as lender. On March 6, 2009, XM amended and restated that credit agreement (the "Second-Lien Credit Agreement") with Liberty Media Corporation. In June 2009, XM repaid all amounts due and terminated the Second-Lien Credit Agreement in connection with the issue and sale of its 11.25% Senior Secured Notes due 2013.

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

In June 2009, Liberty Media Corporation purchased $100,000 aggregate principal amount of XM's 11.25% Senior Secured Notes due 2013 as part of the offering of such notes. In August 2009, Liberty Media Corporation purchased $50,000 aggregate principal amount of SIRIUS' 9.75% Senior Secured Notes due 2015 as part of the offering of such notes.

As of September 30, 2009, we recorded $265,659 as Long-term related party debt related to the transactions with Liberty Media. This amount included the following principal amounts; $87,000 of XM's 11.25% Senior Secured Notes due 2013, $76,000 of XM's 13% Senior Notes due 2013, $11,000 of XM's 7% Exchangeable Senior Subordinated Notes due 2014, $55,221 of SIRIUS' 9$^{5}/_{8}$% Senior Notes due 2013, and $50,000 of SIRIUS' 9.75% Senior Secured Notes due 2015. As of September 30, 2009, we recorded $5,737 related to accrued interest with Liberty Media to Related party current liabilities.

SIRIUS XM RADIO INC. AND SUBSIDIARIES
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We recognized Interest expense related to Liberty Media of $18,067 and $69,439 for the three and nine months ended September 30, 2009, respectively.

SIRIUS Canada

In 2005, SIRIUS entered into a license and services agreement with SIRIUS Canada. Pursuant to such agreement, SIRIUS is reimbursed for certain costs incurred to provide SIRIUS Canada service, including certain costs incurred for the production and distribution of radios, as well as information technology support costs. In consideration for the rights granted pursuant to this license and services agreement, SIRIUS has the right to receive a royalty equal to a percentage of SIRIUS Canada's gross revenues based on subscriber levels (ranging between 5% to 15%) and the number of Canadian-specific channels made available to SIRIUS Canada. SIRIUS' investment in SIRIUS Canada is primarily non-voting shares which carry an 8% cumulative dividend.

Total costs that have been or will be reimbursed by SIRIUS Canada for the three months ended September 30, 2009 and 2008 were $2,471 and $3,345, respectively, and $8,196 and $11,175 for the nine months ended September 30, 2009 and 2008, respectively. We recorded $1,525 and $0 in royalty income for the three months ended September 30, 2009 and 2008, respectively, and $3,695 and $0 for the nine months ended September 30, 2009 and 2008, respectively. Such royalty income was recognized as a component of Other revenue in our unaudited consolidated statements of operations. We also recorded dividend income of $219 and $0 for the three months ended September 30, 2009 and 2008, respectively, and $612 and $0 for the nine months ended September 30, 2009 and 2008, respectively, which was included in Interest and investment income in our unaudited consolidated statements of operations. Receivables recorded relating to royalty income and dividend income were fully utilized to absorb a portion of our share of the losses generated by SIRIUS Canada during the three and nine months ended September 30, 2009.

As of September 30, 2009 and December 31, 2008, other amounts due from SIRIUS Canada recorded in Related party current assets were $3,379 and $1,814, respectively. As of September 30, 2009 and December 31, 2008, amounts payable to SIRIUS Canada to fund its remaining capital requirements recorded in Related party current liabilities were $1,305 and $1,160, respectively.

XM Canada

In 2005, XM entered into agreements to provide XM Canada with the right to offer XM satellite radio service in Canada. The agreements have an initial term of ten years and XM Canada has the unilateral option to extend the term of the agreements for an additional five years at no additional cost beyond the current financial arrangements. XM Canada has expressed its intent to exercise this option at the end of the initial term of the agreements. XM has the right to receive a 15% royalty for all subscriber fees earned by XM Canada each month for its basic service and a nominal activation fee for each gross activation of an XM Canada subscriber on XM's system. XM Canada is obligated to pay XM a total of $71,800 for the rights to broadcast and market National Hockey League ("NHL") games for the 10-year term of XM's contract with the NHL. We recognize these payments on a gross basis as a principal obligor pursuant to the provisions of ASC 605, *Revenue Recognition*.

The estimated fair value of deferred revenue from XM Canada as of the Merger date was approximately $34,000, and is being amortized on a straight-line basis over the remaining expected term of the agreements. Subsequent to the Merger date, we began to record additional deferred revenue on our agreements with XM Canada involving royalties on subscriber and activation fees. As of September 30, 2009 and December 31, 2008, the carrying value of Deferred revenue related to XM Canada was $39,566 and $36,002, respectively.

XM has extended a Cdn$45,000 standby credit facility to XM Canada which can be utilized to purchase terrestrial repeaters or finance the payment of subscription fees. The facility matures on December 31, 2012 and bears interest at a rate of 17.75% per annum. XM has the right to convert unpaid principal amounts into Class A subordinate voting shares of XM Canada at the price of Cdn$16.00 per share. As of September 30, 2009 and December 31, 2008, amounts drawn by XM Canada on this facility in lieu of payment of subscription fees recorded in Related party long-term assets were $15,522 and $8,311, respectively.

In connection with the deferred income related to XM Canada, we recorded amortization of $694 and $471 for the three months ended September 30, 2009 and 2008, respectively, and $2,082 and $471 for the nine months ended September 30, 2009 and 2008, respectively. The royalty fees XM earns related to subscriber and activation fees are reported as a component of Other revenue in our unaudited consolidated statements of operations. We recorded royalty fees of $225 and $146 for the three months ended September 30, 2009 and 2008, respectively, and $499 and $146 for the nine months ended September 30, 2009 and 2008, respectively. XM Canada pays XM a licensing fee and reimburses XM for advertising, both of which are reported as a component of Other revenue in our unaudited consolidated statements of operations. We recognized licensing fee revenue of $1,500 and $1,000 for the three months ended September 30, 2009 and 2008, respectively, and $4,500 and $1,000 for the nine months ended September 30, 2009 and 2008, respectively. We recognized advertising reimbursements of $0 for each of the three months ended September 30, 2009 and 2008, respectively, and $733 and $0 for the nine months ended September 30, 2009 and 2008, respectively. As of September 30, 2009 and December 31, 2008, amounts due from XM Canada recorded in Related party current assets were $3,408 and $5,594, respectively. As of September 30, 2009 and December 31, 2008, amounts due from XM Canada (in addition to the amounts drawn on the standby credit facility) recorded in Related party long-term assets were $6,000 and $0, respectively.

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General Motors

XM has a long-term distribution agreement with General Motors Company ("GM"). GM has a representative on our board of directors and is considered a related party. During the term of the agreement, GM has agreed to distribute the XM service. XM subsidizes a portion of the cost of XM radios and makes incentive payments to GM when the owners of GM vehicles with installed XM radios become subscribers to XM's service. XM also shares with GM a percentage of the subscriber revenue attributable to GM vehicles with installed XM radios. As part of the agreement, GM provides certain call-center related services directly to XM subscribers who are also GM customers for which we reimburse GM.

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

We recorded total revenue from GM, primarily consisting of subscriber revenue, of $8,831 and $6,733 for the three months ended September 30, 2009 and 2008, respectively, and $22,087 and $6,733 for the nine months ended September 30, 2009 and 2008, respectively.

We recognized Sales and marketing expense with GM of $7,720 and $8,539 for the three months ended September 30, 2009 and 2008, respectively, and $23,387 and $8,539 for the nine months ended September 30, 2009 and 2008, respectively. We recognized Revenue share and royalties expense with GM of $15,008 and $26,021 for the three months ended September 30, 2009 and 2008, respectively, and $46,664 and $26,021 for the nine months ended September 30, 2009 and 2008, respectively. We recognized Subscriber acquisition costs with GM of $9,035 and $29,530 for the three months ended September 30, 2009 and 2008, respectively, and $25,066 and $29,530 for the nine months ended September 30, 2009 and 2008, respectively.

As of September 30, 2009, amounts due from GM and prepaid expenses with GM recorded in Related party current assets were $8,175 and $91,902, respectively. As of September 30, 2009, prepaid expenses with GM recorded in Related party long-term assets were $92,551. As of December 31, 2008, amounts due from GM and prepaid expenses with GM recorded in Related party current assets were $10,132 and $94,444, respectively. As of December 31, 2008, prepaid expenses with GM recorded in Related party long-term assets were $116,296.

As of September 30, 2009 and December 31, 2008, amounts due to GM recorded in Related party current liabilities were $79,813 and $63,023, respectively. As of September 30, 2009 and December 31, 2008, amounts due to GM recorded in Related party long-term liabilities were $21,928 and $0, respectively.

American Honda

XM has an agreement to make a certain amount of its bandwidth available to American Honda. American Honda has a representative on our board of directors and is considered a related party. American Honda's use of XM's bandwidth must be in compliance with applicable laws, must not compete or adversely interfere with XM's business, and must meet XM's quality standards. This agreement remains in effect so long as American Honda holds a certain amount of its investment in us. XM makes incentive payments to American Honda for each purchaser of a Honda or Acura vehicle that becomes a self-paying XM subscriber and shares with American Honda a portion of the subscriber revenue attributable to Honda and Acura vehicles with installed XM radios.

We recorded total revenue from American Honda, primarily consisting of subscriber revenue, of $3,374 and $3,321 for the three months ended September 30, 2009 and 2008, respectively, and $9,201 and $3,321 for the nine months ended September 30, 2009 and 2008, respectively.

We recognized Sales and marketing expense with American Honda of $1,647 and $1,848 for the three months ended September 30, 2009 and 2008, respectively, and $4,391 and $1,848 for the nine months ended September 30, 2009 and 2008, respectively. We recognized Revenue share and royalties expense with American Honda of $1,636 and $747 for the three months ended September 30, 2009 and 2008, respectively, and $4,601 and $747 for the nine months ended September 30, 2009 and 2008, respectively.

SIRIUS XM RADIO INC. AND SUBSIDIARIES
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As of September 30, 2009 and December 31, 2008, amounts due from American Honda recorded in Related party current assets were $2,308 and $2,194, respectively.

As of September 30, 2009 and December 31, 2008, amounts due to American Honda recorded in Related party current liabilities were $4,014 and $4,190, respectively.

(10) Investments

Investments consist of the following:

	September 30, 2009	December 31, 2008
Marketable securities	$ 11,555	$ 10,525
Restricted investments	3,400	141,250
Embedded derivative accounted for separately from the host contract	26	2
Equity method investments	2,679	8,873
Total investments	$ 17,660	$ 160,650

SIRIUS Canada

We have a 49.9% economic interest in SIRIUS Canada. Our investment in SIRIUS Canada is recorded using the equity method since we have a significant influence, but less than a controlling voting interest in SIRIUS Canada. Under this method, our investment in SIRIUS Canada, originally recorded at cost, is adjusted quarterly to recognize our proportionate share of net earnings or losses as they occur, rather than at the time dividends or other distributions are received, limited to the extent of our investment in, advances to and commitments to fund SIRIUS Canada. Our share of net earnings or losses of SIRIUS Canada is recorded to Gain (loss) on investments in our unaudited consolidated statements of operations. We recorded losses of $1,744 and $0 for the three months ended September 30, 2009 and 2008, respectively, and $4,307 and $0 for the nine months ended September 30, 2009 and 2008, respectively, for our share of SIRIUS Canada's net loss. We recorded $4,555 and $11,424, respectively, for the three and nine months ended September 30, 2009 to Gain (loss) on investments in our unaudited consolidated statements of operations for payments received from SIRIUS Canada in excess of our carrying value of our investments in, advances to and commitments to such entity. As of September 30, 2009, the carrying value of our equity method investment in SIRIUS Canada was $0.

XM Canada

We have a 23.33% economic interest in XM Canada. The amount of the Merger purchase price allocated to the fair value of our investment in XM Canada was $41,188. Our investment in XM Canada is recorded using the equity method (on a one-month lag) since we have significant influence, but less than a controlling voting interest in XM Canada. Under this method, our investment in XM Canada is adjusted quarterly to recognize our share of net earnings or losses as they occur, rather than at the time dividends or other distributions are received, limited to the extent of our investment in, advances to, and commitments to fund XM Canada. Our share of net earnings or losses of XM Canada is recorded to Gain (loss) on investments in our unaudited consolidated statements of operations. We recorded $2,870 and $1,926 for the three and nine months ended September 30, 2009, respectively, for our share of XM Canada's net loss. We recorded $3,088 for the three and nine months ended September 30, 2008 for our share of XM Canada's net loss. During the three and nine months ended September 30, 2009, we reduced the carrying value of our investment in XM Canada due to decreases in fair value that were considered to be other than temporary and recorded impairment charges of $4,734 and $0 for the nine months ended September 30, 2009 and 2008, respectively. In addition, during the three and nine months ended September 30, 2009, we recorded ($35) and $466, respectively, as a foreign exchange gain (loss) to Accumulated other comprehensive loss, net of tax.

XM Holdings holds an investment in Cdn$4,000 face value of 8% convertible unsecured subordinated debentures issued by XM Canada for which the embedded conversion feature is bifurcated from the host contract. The host contract is accounted for as an available-for-sale security at fair value with changes in fair value recorded to Accumulated other comprehensive loss, net of tax. The embedded conversion feature is accounted for as a derivative at fair value with changes in fair value recorded in earnings as Interest and investment income. As of September 30, 2009, the carrying value of our equity method investment in XM Canada was $2,679, while the carrying values of the host contract and embedded derivative related to our investment in the debentures was $2,967 and $26, respectively. As of December 31, 2008, the carrying value of our equity method investment in XM Canada was $8,873, while the carrying values of the host contract and embedded derivative related to our investment in the debentures was $2,540 and $2, respectively.

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Auction Rate Certificates

Auction rate certificates are long-term securities structured to reset their coupon rates by means of an auction. We account for our investment in auction rate certificates as available-for-sale securities. As of September 30, 2009 and December 31, 2008, the carrying value of these securities was $8,588 and $7,985, respectively.

Restricted Investments

Restricted investments relate to deposits placed into escrow for the benefit of third parties pursuant to programming agreements and reimbursement obligations under letters of credit issued for the benefit of lessors of office space. As of September 30, 2009 and December 31, 2008, the carrying value of our long-term restricted investments was $3,400 and $141,250, respectively.

(11) Debt

Our debt consists of the following:

	Conversion Price (per share)	Long Term Debt	
		September 30, 2009	December 31, 2008
SIRIUS Debt			
8 3/4% Convertible Subordinated Notes due 2009	$ 28.46	$ —	$ 1,744
3 1/4% Convertible Notes due 2011	$ 5.30	230,000	230,000
Senior Secured Term Loan due 2012	N/A	245,000	246,875
9 5/8% Senior Notes due 2013	N/A	500,000	500,000
9.75% Senior Secured Notes due 2015	N/A	257,000	—
Less: discount		(12,006)	—
2 1/2% Convertible Notes due 2009	$ 4.41	—	189,586
XM and XM Holdings Debt			
10% Convertible Senior Notes due 2009	$ 10.87	48,450	400,000
Less: discount		(371)	(16,449)
10% Senior Secured Discount Convertible Notes due 2009	$ 0.69	33,249	33,249
Add: premium		6,450	34,321
10% Senior PIK Secured Notes due 2011	N/A	172,485	—
Less: discount		(12,870)	—
11.25% Senior Secured Notes due 2013	N/A	525,750	—
Less: discount		(34,525)	—
13% Senior Notes due 2013	N/A	778,500	778,500
Less: discount		(66,538)	(74,986)
9.75% Senior Notes due 2014	N/A	5,260	5,260
7% Exchangeable Senior Subordinated Notes due 2014	$ 1.875	550,000	550,000
Senior Secured Term Loan due 2009	N/A	—	100,000
Senior Secured Revolving Credit Facility due 2009	N/A	—	250,000
Add: premium		—	151
Other debt:			
Capital leases	N/A	17,890	23,215
Total debt		3,243,724	3,251,466
Less: current maturities		103,674	399,726
Total long-term		3,140,050	2,851,740
Less: related party		265,659	—
Total long-term, excluding related party		$ 2,874,391	$ 2,851,740

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SIRIUS Debt

8 3/4% Convertible Subordinated Notes due 2009

In 1999, SIRIUS issued 8 3/4% Convertible Subordinated Notes due 2009 (the "8 3/4% Notes"). The balance of the 8 3/4% Notes matured on September 29, 2009 and were repaid in cash.

3 1/4% Convertible Notes due 2011

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

Senior Secured Term Loan due 2012

In June 2007, SIRIUS entered into a term credit agreement with a syndicate of financial institutions. The term credit agreement provides for a senior secured term loan (the "Senior Secured Term Loan") of $250,000, which has been fully drawn. Interest under the Senior Secured Term Loan is based, at our option, on (i) adjusted LIBOR plus 2.25% or (ii) the higher of (a) the prime rate and (b) the Federal Funds Effective Rate plus 1/2 of 1.00%, plus 1.25%. The current interest rate is 2.563%. The Senior Secured Term Loan amortizes in equal quarterly installments of 0.25% of the initial aggregate principal amount for the first four and a half years, with the balance of the loan thereafter being repaid in four equal quarterly installments. The Senior Secured Term Loan matures on December 20, 2012.

The Senior Secured Term Loan is guaranteed by certain of our wholly owned subsidiaries, including Satellite CD Radio, Inc. (the "Guarantor"), and is secured by a lien on substantially all of SIRIUS' and the Guarantor's assets, including SIRIUS' four in-orbit satellites, one ground spare satellite and the shares of the Guarantor.

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

LM Term Loan and LM Purchase Money Loan

In February 2009, SIRIUS entered into a Credit Agreement (the "LM Credit Agreement") with Liberty Media Corporation, as administrative agent and collateral agent. The LM Credit Agreement provided for a $250,000 term loan ("LM Term Loan") and $30,000 of purchase money loans ("LM Purchase Money Loan"). Concurrently with entering into the LM Credit Agreement, SIRIUS borrowed $250,000 under the LM Term Loan. The proceeds of the LM Term Loan were used (i) to repay at maturity our outstanding 2 1/2% Convertible Notes due February 17, 2009 and (ii) for general corporate purposes, including related transaction costs.

In August 2009, SIRIUS used net proceeds from the sale of its 9.75% Senior Secured Notes due 2015 to extinguish the LM Term Loan and LM Purchase Money Loan. We recorded an aggregate loss on extinguishment of the LM Term Loan and LM Purchase Money Loan of $134,520 consisting primarily of the unamortized discount, deferred financing fees and unaccreted portion of the repayment premium to Loss on extinguishment of debt and credit facilities in our unaudited consolidated statements of operations.

9.75% Senior Secured Notes due 2015

In August 2009, SIRIUS issued $257,000 aggregate principal amount of 9.75% Senior Secured Notes due 2015 (the "9.75% Notes"). Interest is payable semi-annually in arrears on March 1 and September 1 of each year, commencing on March 1, 2010, at a rate of 9.75% per annum. The 9.75% Notes mature on September 1, 2015. The 9.75% Notes were issued for $244,787, resulting in an aggregate original issuance discount, including fees, of $12,213. The proceeds of the 9.75% Notes were used to extinguish the LM Term Loan and LM Purchase Money Loan.

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

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9⅝% Senior Notes due 2013

In August 2005, SIRIUS issued $500,000 in aggregate principal amount of 9⅝% Senior Notes due 2013 (the "9⅝% Notes") resulting in net proceeds, after debt issuance costs, of $493,005. The 9⅝% Notes mature on August 1, 2013 and interest is payable semi-annually on February 1 and August 1 of each year. The obligations under the 9⅝% Notes are not secured by any of our assets.

2½% Convertible Notes due 2009

In February 2004, SIRIUS issued $250,000 in aggregate principal amount of 2½% Convertible Notes due 2009 (the "2½% Notes") resulting in net proceeds, after debt issuance costs, of $244,625. The remaining principal balance of the 2½% Notes matured on February 17, 2009, and was paid in cash at maturity.

Space Systems/Loral Credit Agreement

In July 2007, SIRIUS amended and restated its existing Credit Agreement with Space Systems/Loral (the "Loral Credit Agreement"). Under the Loral Credit Agreement, Space Systems/Loral agreed to make loans to SIRIUS to finance the purchase of its fifth and sixth satellites through June 10, 2010. As of September 30, 2009, Loral's commitment was approximately $19,730. Loans made under the Loral Credit Agreement will be secured by SIRIUS' rights under the Satellite Purchase Agreement with Space Systems/Loral, including SIRIUS' rights to its sixth satellite. The loans will also be entitled to the benefits of a subsidiary guarantee from Satellite CD Radio, Inc., the subsidiary that holds SIRIUS' FCC license, and any future material subsidiary that may be formed by SIRIUS. The maturity date of the loans is the earliest to occur of (i) June 10, 2010, (ii) 90 days after the sixth satellite becomes available for shipment and (iii) 30 days prior to the scheduled launch of the sixth satellite. The Loral Credit Agreement contains certain conditions to borrowings, including payment of periodic commitment fees. Any loans made under the Loral Credit Agreement generally will bear interest at a variable rate equal to 3-month LIBOR plus 4.75%. The daily unused balance bears interest at a rate per annum equal to 0.50%, payable quarterly on the last day of each March, June, September and December. The Loral Credit Agreement permits SIRIUS to prepay all or a portion of the loans outstanding without penalty. SIRIUS has not borrowed under the Loral Credit Agreement.

XM and XM Holdings Debt

10% Convertible Senior Notes due 2009

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

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

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

10% Senior Secured Discount Convertible Notes due 2009

XM Holdings and XM, as co-obligors, have outstanding $33,249 aggregate principal amount of 10% Senior Secured Discount Convertible Notes due 2009 (the "10% Discount Convertible Notes"). Interest is payable semi-annually at a rate of 10% per annum. The 10% Discount Convertible Notes mature on December 31, 2009. At any time, a holder of the notes may convert all or part of the accreted value of the notes at a conversion price of $0.69 per share. As a result of the fair valuation at the acquisition date, we recognized an initial premium of $57,550.

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10% Senior PIK Secured Notes due 2011

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

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

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

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

Amended and Restated Credit Agreement due 2011

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

In June 2009, XM used net proceeds from the sale of its 11.25% Senior Secured Notes due 2013 to repay amounts due under and extinguish the Amended and Restated Credit Agreement. XM paid a repayment premium of $6,500. We recorded an aggregate loss on extinguishment of the Amended and Restated Credit Agreement of $49,786 consisting primarily of the unamortized discount, deferred financing fees and unaccreted portion of the repayment premium to Loss on extinguishment of debt and credit facilities in our unaudited consolidated statements of operations.

11.25% Senior Secured Notes due 2013

In June 2009, XM issued $525,750 aggregate principal amount of 11.25% Senior Secured Notes due 2013 (the "11.25% Notes"). Interest is payable semi-annually in arrears on June 15 and December 15 of each year at a rate of 11.25% per annum. The 11.25% Notes mature on June 15, 2013. The 11.25% Notes were issued for $489,952, resulting in an aggregate original issuance discount, including fees, of $35,798.

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

In June 2009, XM used a portion of the net proceeds from the sale of the 11.25% Notes to repay in full $325,000 principal amount outstanding under the Amended and Restated Credit Agreement. In connection with the sale of the 11.25% Notes, XM terminated the Second-Lien Credit Agreement and repaid all amounts thereunder.

13% Senior Notes due 2013

In July 2008, XM issued $778,500 aggregate principal amount of 13% Senior Notes due 2013 (the "13% Notes"). Interest is payable semi-annually in arrears on February 1 and August 1 of each year at a rate of 13% per annum. The 13% Notes were issued for $700,105, resulting in an original issuance discount of $78,395. The 13% Notes are unsecured and mature on August 1, 2013.

9.75% Senior Notes due 2014

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

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

7% Exchangeable Senior Subordinated Notes due 2014

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

Second-Lien Credit Agreement

In February 2009, XM entered into a Credit Agreement (the "XM Credit Agreement") with Liberty Media Corporation, as administrative agent and collateral agent. The XM Credit Agreement provided for a $150,000 term loan. On March 6, 2009, XM amended and restated the XM Credit Agreement (the "Second-Lien Credit Agreement") with Liberty Media Corporation.

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

Covenants and Restrictions

Our debt generally requires compliance with certain covenants that restrict our ability to, among other things, (i) incur additional indebtedness, (ii) incur liens, (iii) pay dividends or make certain other restricted payments, investments or acquisitions, (iv) enter into certain transactions with affiliates, (v) merge or consolidate with another person, (vi) sell, assign, lease or otherwise dispose of all or substantially all of our assets, and (vii) make voluntary prepayments of certain debt, in each case subject to exceptions. SIRIUS operates XM Holdings as an unrestricted subsidiary for purposes of compliance with the covenants contained in its debt instruments. If we fail to comply with these covenants, our debt could become immediately payable.

At September 30, 2009, we were in compliance with all financial covenants.

(12) Stockholders' Equity

Common Stock, par value $0.001 per share

We were authorized to issue up to 9,000,000,000 and 8,000,000,000 shares of common stock as of September 30, 2009 and December 31, 2008, respectively. There were 3,858,186,839 and 3,651,765,837 shares of common stock issued and outstanding as of September 30, 2009 and December 31, 2008, respectively.

As of September 30, 2009, approximately 3,848,417,000 shares of common stock were reserved for issuance in connection with outstanding convertible debt, preferred stock, warrants, incentive stock plans and common stock to be granted to third parties upon satisfaction of performance targets. During the three and nine months ended September 30, 2009, employees did not exercise any stock options.

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

In January 2004, SIRIUS signed a seven-year agreement with a sports programming provider. Upon execution of this agreement, SIRIUS delivered 15,173,070 shares of common stock valued at $40,967 to that programming provider. These shares of common stock are subject to transfer restrictions which lapse over time. We recognized expense associated with these shares of $1,641 for each of the three months ended September 30, 2009 and 2008, respectively, and $3,501 for each of the nine months ended September 30, 2009 and 2008, respectively. As of September 30, 2009, there was a $9,771 remaining balance of common stock value included in Other current assets and Other long-term assets in the amount of $5,852 and $3,919, respectively. As of December 31, 2008, there was a $13,272 remaining balance of common stock value included in Other current assets and Other long-term assets in the amount of $5,852 and $7,420, respectively.

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Preferred Stock, par value $0.001 per share

We were authorized to issue up to 50,000,000 shares of undesignated preferred stock as of September 30, 2009. There were 24,808,959 shares of Series A convertible preferred stock issued and outstanding as of September 30, 2009 and December 31, 2008. There were 12,500,000 shares of Convertible Perpetual Preferred Stock, Series B (the "Series B Preferred Stock"), issued and outstanding as of September 30, 2009. There were no shares of Preferred Stock, Series C Junior (the "Series C Junior Preferred Stock"), issued and outstanding at September 30, 2009.

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

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

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

Warrants

We have issued warrants to purchase shares of common stock in connection with distribution and programming agreements, satellite purchase agreements and certain debt issuances. As of September 30, 2009, approximately 49,315,000 warrants to acquire approximately 81,739,000 shares of common stock with an average exercise price of $3.12 per share were outstanding. We recognized expense of $1,318 during the three months ended March 31, 2009 due to the cancellation of certain warrants and the issuance of replacement warrants expiring in March 2015. Warrants vest over time or upon the achievement of milestones and expire at various times through 2015. We recognized aggregate warrant related expense (benefit) of $0 and ($620) for the three months ended September 30, 2009 and 2008, respectively, and $2,522 and $2,236 for the nine months ended September 30, 2009 and 2008, respectively.

Rights Plan

In April 2009, our board of directors adopted a rights plan. The terms of the rights and the rights plan are set forth in a Rights Agreement dated as of April 29, 2009 (the "Rights Plan"). The Rights Plan is intended to act as a deterrent to any person or group acquiring 4.9% or more of our outstanding common stock (assuming for purposes of this calculation that all of our outstanding convertible preferred stock is converted into common stock) without the approval of our board of directors.

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

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(13) Benefits Plans

We maintain four share-based benefits plans. We satisfy awards and options granted under these plans through the issuance of new shares. We recognized share-based payment expense of $17,674 and $24,005 for the three months ended September 30, 2009 and 2008, respectively, and $67,553 and $63,417 for the nine months ended September 30, 2009 and 2008, respectively. For a summarized schedule of share-based payment expense, see the appended footnote to our unaudited consolidated statements of operations. We did not realize any income tax benefits from share-based benefits plans during the three and nine months ended September 30, 2009 and 2008, as a result of a full valuation allowance that is maintained for substantially all net deferred tax assets.

2009 Long-Term Stock Incentive Plan

In May 2009, our stockholders approved the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan (the "2009 Plan"). Employees, consultants and members of our board of directors are eligible to receive awards under the 2009 Plan. The 2009 Plan provides for the grant of stock options, restricted stock, restricted stock units and other stock-based awards that the compensation committee of our board of directors may deem appropriate. Vesting and other terms of stock-based awards are set forth in the agreements with the individuals receiving the awards. Stock-based awards granted under the 2009 Plan are generally subject to a vesting requirement. Stock-based awards generally expire ten years from the date of grant. Each restricted stock unit entitles the holder to receive one share of common stock upon vesting. As of September 30, 2009, approximately 359,762,000 shares of common stock were available for future grant under the 2009 Plan.

Other Plans

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

The following table summarizes the weighted-average assumptions used to compute reported share-based payment expense to employees and members of our board of directors for the three and nine months ended September 30, 2009 and 2008:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Risk-free interest rate	2.5%	3.1%	2.5%	2.7%
Expected life of options — years	4.57	4.06	4.64	4.06
Expected stock price volatility	88%	80%	88%	80%
Expected dividend yield	$ —	$ —	$ —	$ —

The following table summarizes the range of assumptions used to compute reported share-based payment expense to third parties, other than non-employee members of our board of directors, for the three and nine months ended September 30, 2009 and 2008:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Risk-free interest rate	1.45 - 2.53%	2.0 - 3.0%	1.08 - 2.54%	1.6 - 3.3%
Expected life — years	2.58 - 4.98	1.50 - 4.06	2.50 - 6.19	1.50 - 4.08
Expected stock price volatility	88-112%	80%	83-112%	80%
Expected dividend yield	$ —	$ —	$ —	$ —

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The following table summarizes stock option activity under our share-based payment plans for the nine months ended September 30, 2009 (shares in thousands):

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding, December 31, 2008	165,436	$ 4.42		
Granted	240,239	$ 0.52		
Exercised	—	$ —		
Forfeited, cancelled or expired	(53,985)	$ 5.08		
Outstanding, September 30, 2009	351,690	$ 1.66	6.83	$ 34,683
Exercisable, September 30, 2009	87,205	$ 4.53	4.44	$ 1

The weighted average grant date fair value of options granted during the nine months ended September 30, 2009 and 2008 was $0.35 and $1.73, respectively. The total intrinsic value of stock options exercised during the nine months ended September 30, 2009 and 2008 was $0 and $127, respectively.

We recognized share-based payment expense associated with stock options of $8,577 and $13,940 for the three months ended September 30, 2009 and 2008, respectively, and $40,890 and $36,465 for the nine months ended September 30, 2009 and 2008, respectively.

The following table summarizes the non-vested restricted stock and restricted stock unit activity under our share-based payment plans for the nine months ended September 30, 2009 (shares in thousands):

	Shares	Weighted-Average Grant Date Fair Value
Nonvested, December 31, 2008	19,931	$ 2.84
Granted	84,851	$ 0.37
Vested	(69,123)	$ 0.75
Forfeited	(2,124)	$ 1.97
Nonvested, September 30, 2009	33,535	$ 0.96

The weighted average grant date fair value of restricted stock units granted during the nine months ended September 30, 2009 and 2008 was $0.37 and $2.87, respectively. The total intrinsic value of restricted stock units that vested during the nine months ended September 30, 2009 and 2008 was $28,865 and $19,529, respectively.

We recognized share-based payment expense associated with restricted stock units and shares of restricted stock of $5,024 and $6,849 for the three months ended September 30, 2009 and 2008, respectively, and $17,881 and $14,433 for the nine months ended September 30, 2009 and 2008, respectively.

Total unrecognized compensation costs related to unvested share-based payment awards granted to employees and members of our board of directors at September 30, 2009 and December 31, 2008, net of estimated forfeitures, was $118,637 and $90,310, respectively. The weighted-average period over which the compensation expense for these awards is expected to be recognized is three years as of September 30, 2009.

401(k) Savings Plans

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

The Sirius Plan allows eligible employees to voluntarily contribute from 1% to 50% of their pre-tax salary subject to certain defined limits. We match 50% of an employee's voluntary contributions, up to 6% of an employee's pre-tax salary, in the form of shares of common stock. Matching contributions under the Sirius Plan vest at a rate of 33 1/3% for each year of employment and are fully vested after three years of employment. Expense resulting from the matching contribution to the plans was $895 and $857 for the three months ended September 30, 2009 and 2008, respectively, and $2,484 and $2,086 for the nine months ended September 30, 2009 and 2008, respectively.

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We may also elect to contribute to the profit sharing portion of the Sirius Plan based upon the total eligible compensation of eligible participants. These additional contributions, referred to as profit-sharing contributions, are determined by the compensation committee of our board of directors. Employees are only eligible to receive profit-sharing contributions during any year in which they are employed on the last day of the year. Profit-sharing contribution expense was $1,537 and $1,665 for the three months ended September 30, 2009 and 2008, respectively, and $573 and $5,025 for the nine months ended September 30, 2009 and 2008, respectively.

(14) Income Taxes

We recorded income tax expense of $1,115 and $1,215 for the three months ended September 30, 2009 and 2008, respectively, and $3,344 and $2,301 for the nine months ended September 30, 2009 and 2008, respectively. Such expense primarily represents the recognition of a deferred tax liability related to the difference in accounting for the FCC license intangible assets, which are amortized over 15 years for tax purposes but are not amortized for book purposes.

(15) Commitments and Contingencies

The following table summarizes our expected contractual cash commitments as of September 30, 2009:

	Remaining 2009	2010	2011	2012	2013	Thereafter	Total
Long-term debt obligations	$ 85,746	$ 13,742	$ 407,889	$239,541	$1,804,406	$ 812,260	$3,363,584
Cash interest payments	65,638	304,935	295,019	276,326	244,049	88,871	1,274,838
Satellite and transmission	34,685	98,933	106,834	36,659	2,370	22,183	301,664
Programming and content	87,630	257,126	147,529	129,236	38,638	29,955	690,114
Marketing and distribution	51,529	43,666	24,868	14,533	3,000	4,500	142,096
Satellite incentive payments	1,801	7,384	8,851	10,505	11,099	74,342	113,982
Operating lease obligations	13,338	37,352	22,851	18,861	15,046	14,854	122,302
Other	16,321	34,096	20,677	8,234	—	—	79,328
Total	$ 356,688	$797,234	$1,034,518	$733,895	$2,118,608	$1,046,965	$6,087,908

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

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

Satellite and transmission. We have entered into agreements with third parties to operate and maintain the off-site satellite telemetry, tracking and control facilities and certain components of our terrestrial repeater networks. We have also entered into various agreements to design and construct satellites for use in our systems and to launch those satellites. SIRIUS has an agreement with Space Systems/Loral to design and construct a sixth satellite. In January 2008, SIRIUS entered into an agreement with International Launch Services ("ILS") to secure a satellite launch on a Proton rocket. We expect to launch our sixth satellite in the fourth quarter of 2011.

Space Systems/Loral has constructed a fifth satellite, XM-5, for use in the XM system. In 2006, XM entered into an agreement with Sea Launch to secure a launch for XM-5. In June 2009, Sea Launch filed for bankruptcy protection under Title 11 of the United States Code. In October 2009, XM Holdings terminated its satellite launch agreement with Sea Launch with the consent of the Bankruptcy Court. In October 2009, we entered into an agreement with ILS to secure a satellite launch for XM-5 on a Proton rocket. We currently expect to launch XM-5 in the second or third quarter of 2010.

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

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

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Satellite incentive payments. Boeing Satellite Systems International, Inc., the manufacturer of XM's four in-orbit satellites, may be entitled to future in-orbit performance payments with respect to two of XM's four satellites. As of September 30, 2009, we have accrued $28,655 related to contingent in-orbit performance payments for XM-3 and XM-4 based on expected operating performance over their fifteen year design life. Boeing may also be entitled to an additional $10,000 if XM-4 continues to operate above baseline specifications during the five years beyond the satellite's fifteen-year design life.

Space Systems/Loral may be entitled to an additional $22,500 if FM-5 continues to operate above baseline specifications during the satellite's fifteen-year design life.

Operating lease obligations. We have entered into cancelable and non-cancelable operating leases for office space, equipment and terrestrial repeaters. These leases provide for minimum lease payments, additional operating expense charges, leasehold improvements, and rent escalations that have initial terms ranging from one to fifteen years, and certain leases that have options to renew. The effect of the rent holidays and rent concessions are recognized on a straight-line basis over the lease term.

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

We are required under the terms of certain agreements to provide letters of credit and deposit monies in escrow, which place restrictions on cash and cash equivalents. As of September 30, 2009 and December 31, 2008, $3,400 and $141,250, respectively, were classified as Restricted investments as a result of obligations under these letters of credit and escrow deposits.

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

Legal Proceedings

FCC Merger Order. On July 25, 2008, the FCC adopted an order approving the Merger. The order became effective immediately upon adoption. In September 2008, Mt. Wilson FM Broadcasters, Inc. filed a Petition for Reconsideration of this order. This Petition for Reconsideration remains pending.

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

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

Other Matters. In the ordinary course of business, we are a defendant in various lawsuits and arbitration proceedings, including actions filed by former employees, parties to contracts or leases and owners of patents, trademarks, copyrights or other intellectual property. None of these actions are, in our opinion, likely to have a material adverse effect on our cash flows, financial position or results of operations.

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

(16) Condensed Consolidating Financial Information

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

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

Basis of Presentation

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

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

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

SIRIUS XM RADIO INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATING BALANCE SHEETS
AS OF SEPTEMBER 30, 2009

(in thousands)	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Current assets:						
Cash and cash equivalents	$ 54,347	$ —	$ —	$ 326,025	$ —	$ 380,372
Accounts receivable, net	83,660	—	—	45,243	—	128,903
Due from subsidiaries/affiliates	141,247	—	—	103	(141,350)	—
Inventory, net	18,073	—	—	2,923	—	20,996
Prepaid expenses	28,080	—	—	79,270	—	107,350
Related party current assets	3,500	—	—	105,672	—	109,172
Other current assets	17,633	—	—	57,594	(10,910)	64,317
Total current assets	346,540	—	—	616,830	(152,260)	811,110
Property and equipment, net	878,817	17,171	—	798,247	—	1,694,235
Investment in subsidiaries/affiliates	(766,229)	—	—	—	766,229	—
FCC licenses	—	—	83,654	2,000,000	—	2,083,654
Restricted investments	3,150	—	—	250	—	3,400
Deferred financing fees, net	8,579	—	—	27,310	—	35,889
Intangible assets, net	—	—	—	629,288	—	629,288
Goodwill	—	—	—	—	1,834,856	1,834,856
Due from subsidiaries/affilates	—	—	—	—	—	—
Related party long-term assets	—	—	—	114,073	—	114,073
Other long-term assets	20,878	—	—	41,560	—	62,438
Total assets	$ 491,735	$ 17,171	$ 83,654	$ 4,227,558	$ 2,448,825	$ 7,268,943
Current liabilities:						
Accounts payable and accrued expenses	$ 323,766	$ —	$ —	$ 205,084	$ (7,229)	$ 521,621
Accrued interest	13,279	—	—	52,258	—	65,537
Due to subsidiaries/affiliates	—	17,548	477	123,344	(141,369)	—
Current portion of deferred revenue	507,241	—	—	472,688	7,248	987,177
Current portion of deferred credit on executory contracts	—	—	—	247,566	—	247,566
Current maturities of long-term debt	2,500	—	—	101,300	(126)	103,674
Related party current liabilities	2,692	—	—	88,177	—	90,869
Total current liabilities	849,478	17,548	477	1,290,417	(141,476)	2,016,444
Deferred revenue	119,587	—	—	165,901	—	285,488
Deferred credit on executory contracts	—	—	—	851,955	—	851,955
Long-term debt	1,113,627	—	—	1,636,869	123,895	2,874,391
Long-term related party debt	103,868	—	—	159,275	2,516	265,659
Deferred tax liability	1,077	—	16,372	899,889	(10,910)	906,428
Related party long-term liabilities	—	—	—	21,928	—	21,928
Other long-term liabilities	5,024	—	—	33,981	—	39,005
Total liabilities	2,192,661	17,548	16,849	5,060,215	(25,975)	7,261,298
Commitments and contingencies						
Stockholders' equity (deficit):						
Preferred and common stock	3,896	—	—	—	—	3,896
Accumulated other comprehensive loss	(6,598)	—	—	(6,598)	6,598	(6,598)
Additional paid-in-capital	10,265,752	—	83,654	5,989,700	(6,073,354)	10,265,752
Retained earnings (accumulated deficit)	(11,963,976)	(377)	(16,849)	(6,815,759)	8,541,556	(10,255,405)
Total stockholders' equity (deficit)	(1,700,926)	(377)	66,805	(832,657)	2,474,800	7,645
Total liabilities and stockholders' equity (deficit)	$ 491,735	$ 17,171	$ 83,654	$ 4,227,558	$ 2,448,825	$ 7,268,943

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

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

(in thousands)	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Current assets:						
Cash and cash equivalents	$ 173,647	$ —	$ —	$ 206,799	$ —	$ 380,446
Accounts receivable, net	95,247	—	—	52,727	—	147,974
Due from subsidiaries/affiliates	64,279	—	—	2,751	(67,030)	—
Inventory, net	19,973	—	—	4,489	—	24,462
Prepaid expenses	29,852	—	—	37,351	—	67,203
Related party current assets	1,814	—	—	112,363	—	114,177
Other current assets	17,513	—	—	53,004	(11,773)	58,744
Total current assets	402,325	—	—	469,484	(78,803)	793,006
Property and equipment, net	816,562	12,326	—	874,588	—	1,703,476
Investment in subsidiaries/affiliates	(525,687)	—	—	—	525,687	—
FCC licenses	—	—	83,654	2,000,000	—	2,083,654
Restricted investments	21,000	—	—	120,250	—	141,250
Deferred financing fees, net	9,853	—	—	30,303	—	40,156
Intangible assets, net	—	—	—	688,671	—	688,671
Goodwill	—	—	—	—	1,834,856	1,834,856
Related party long-term assets	—	—	—	124,607	—	124,607
Other long-term assets	46,735	—	—	34,284	—	81,019
Total assets	$ 770,788	$ 12,326	$ 83,654	$ 4,342,187	$ 2,281,740	$ 7,490,695
Current liabilities:						
Accounts payable and accrued expenses	$ 405,303	$ —	$ —	$ 245,598	$ (8,081)	$ 642,820
Accrued interest	25,920	—	—	50,543	—	76,463
Due to subsidiaries/affiliates	—	12,481	477	15,497	(28,455)	—
Current portion of deferred revenue	557,392	—	—	419,707	8,081	985,180
Current portion of deferred credit on executory contracts	—	—	—	234,774	—	234,774
Current maturities of long-term debt	4,244	—	—	355,739	39,743	399,726
Related party current liabilities	23,018	—	—	83,930	(38,575)	68,373
Total current liabilities	1,015,877	12,481	477	1,405,788	(27,287)	2,407,336
Deferred revenue	116,634	—	—	131,255	—	247,889
Deferred credit on executory contracts	—	—	—	1,037,190	—	1,037,190
Long-term debt	1,163,961	—	—	1,439,102	248,677	2,851,740
Deferred tax liability	4,990	—	14,761	886,475	(11,773)	894,453
Related party long-term liabilities	—	—	—	—	—	—
Other long-term liabilities	7,225	—	—	36,325	—	43,550
Total liabilities	2,308,687	12,481	15,238	4,936,135	209,617	7,482,158
Commitments and contingencies						
Stockholders' equity (deficit):						
Common and preferred stock	3,677	—	—	—	—	3,677
Accumulated other comprehensive loss	(7,871)	—	—	(7,871)	7,871	(7,871)
Additional paid-in-capital	9,724,991	—	83,654	5,870,502	(5,954,156)	9,724,991
Retained earnings (accumulated deficit)	(11,258,696)	(155)	(15,238)	(6,456,579)	8,018,408	(9,712,260)
Total stockholders' equity (deficit)	(1,537,899)	(155)	68,416	(593,948)	2,072,123	8,537
Total liabilities and stockholders' equity (deficit)	$ 770,788	$ 12,326	$ 83,654	$ 4,342,187	$ 2,281,740	$ 7,490,695

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

SIRIUS XM RADIO INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS
FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2009

(in thousands)	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Revenue	$ 293,000	$ —	$ —	$ 325,656	$ —	$ 618,656
Cost of services	144,237	1	—	122,650	—	266,888
Sales and marketing	20,745	—	—	31,785	—	52,530
Subscriber acquisition costs	54,945	—	—	35,109	—	90,054
General and administrative	31,705	—	—	25,218	—	56,923
Engineering, design and development	5,837	—	—	5,415	—	11,252
Depreciation and amortization	30,474	39	—	41,587	—	72,100
Restructuring, impairments and related costs	(476)	—	—	3,030	—	2,554
Total operating expenses	287,467	40	—	264,794	—	552,301
Income (loss) from operations	5,533	(40)	—	60,862	—	66,355
Other income (expense):						
Interest and investment income	235	—	—	727	—	962
Interest expense, net of amounts capitalized	(23,504)	—	—	(70,617)	15,594	(78,527)
Gain (loss) on change in value of embedded derivative	—	—	—	(33,700)	33,700	—
Loss on extinguishment of debt and facilities, net	(134,520)	—	—	(3,786)	253	(138,053)
Gain (loss) on investments	(51,135)	—	—	1,866	49,211	(58)
Other income (expense)	4,654	—	—	(3,408)	—	1,246
Income (loss) before income taxes	(198,737)	(40)	—	(48,056)	98,758	(148,075)
Income tax expense	—	—	(537)	(578)	—	(1,115)
Net income (loss)	(198,737)	(40)	(537)	(48,634)	98,758	(149,190)
Preferred stock beneficial conversion feature	—	—	—	—	—	—
Net income (loss) attributable to common stockholders	$ (198,737)	$ (40)	$ (537)	$ (48,634)	$ 98,758	$ (149,190)

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

SIRIUS XM RADIO INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS
FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2008

(in thousands)	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Revenue	$ 292,963	$ —	$ —	$ 195,480	$ —	$ 488,443
Cost of services	174,329	—	—	98,031	—	272,360
Sales and marketing	34,407	—	—	29,230	—	63,637
Subscriber acquisition costs	59,058	—	—	27,558	—	86,616
General and administrative	38,095	—	—	19,215	—	57,310
Engineering, design and development	5,243	—	—	5,191	—	10,434
Impairment of goodwill	—	—	—	4,750,859	—	4,750,859
Depreciation and amortization	32,136	18	—	34,620	—	66,774
Restructuring, impairments and related costs	7,430	—	—	—	—	7,430
Total operating expenses	350,698	18	—	4,964,704	—	5,315,420
Income (loss) from operations	(57,735)	(18)	—	(4,769,224)	—	(4,826,977)
Other income (expense):						
Interest and investment income	977	—	—	3,963	—	4,940
Interest expense, net of amounts capitalized	(16,311)	—	—	(32,905)	—	(49,216)
Loss on extinguishment of debt and facilities, net	—	—	—	—	—	—
Gain (loss) on investments	(4,806,394)	—	—	(3,089)	4,806,394	(3,089)
Other income (expense)	204	—	—	(4,074)	—	(3,870)
Income (loss) before income taxes	(4,879,259)	(18)	—	(4,805,329)	4,806,394	(4,878,212)
Income tax expense	—	—	(543)	(672)	—	(1,215)
Net income (loss)	$(4,879,259)	$ (18)	$ (543)	$ (4,806,001)	$ 4,806,394	$ (4,879,427)

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

SIRIUS XM RADIO INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009

(in thousands)	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Revenue	$ 861,354	$ —	$ —	$ 935,110	$ —	$ 1,796,464
Cost of services	417,599	9	—	373,065	—	790,673
Sales and marketing	54,229	—	—	98,418	—	152,647
Subscriber acquisition costs	147,027	—	—	83,746	—	230,773
General and administrative	91,263	—	—	91,690	—	182,953
Engineering, design and development	16,177	—	—	16,798	—	32,975
Depreciation and amortization	84,949	213	—	146,462	—	231,624
Restructuring, impairments and related costs	553	—	—	29,614	—	30,167
Total operating expenses	811,797	222	—	839,793	—	1,651,812
Income (loss) from operations	49,557	(222)	—	95,317	—	144,652
Other income (expense):						
Interest and investment income	757	—	—	1,845	—	2,602
Interest expense, net of amounts capitalized	(63,306)	—	—	(226,934)	50,178	(240,062)
Gain (loss) on change in value of embedded derivative	—	—	—	(111,703)	111,703	—
Loss on extinguishment of debt and facilities, net	(152,157)	—	—	(111,863)	253	(263,767)
Gain (loss) on investments	(353,897)	—	—	(6,660)	361,014	457
Other income (expense)	(46)	—	—	2,551	—	2,505
Income (loss) before income taxes	(519,092)	(222)	—	(357,447)	523,148	(353,613)
Income tax expense	—	—	(1,611)	(1,733)	—	(3,344)
Net income (loss)	(519,092)	(222)	(1,611)	(359,180)	523,148	(356,957)
Preferred stock beneficial conversion feature	(186,188)	—	—	—	—	(186,188)
Net income (loss) attributable to common stockholders	$ (705,280)	$ (222)	$ (1,611)	$ (359,180)	$ 523,148	$ (543,145)

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

SIRIUS XM RADIO INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2008

(in thousands)	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non - Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Revenue	$ 846,329	$ —	$ —	$ 195,480	$ —	$ 1,041,809
Cost of services	462,051	—	—	98,584	—	560,635
Sales and marketing	120,688	—	—	30,549	—	151,237
Subscriber acquisition costs	230,264	—	—	27,568	—	257,832
General and administrative	129,339	—	—	19,216	—	148,555
Engineering, design and development	22,900	—	—	5,191	—	28,091
Impairment of goodwill	—	—	—	4,750,859	—	4,750,859
Depreciation and amortization	86,119	54	—	34,620	—	120,793
Restructuring, impairments and related costs	7,457	—	—	—	—	7,457
Total operating expenses	1,058,818	54	—	4,966,587	—	6,025,459
Income (loss) from operations	(212,489)	(54)	—	(4,771,107)	—	(4,983,650)
Other income (expense):						
Interest and investment income	5,204	—	—	3,963	—	9,167
Interest expense, net of amounts capitalized	(50,731)	—	—	(32,905)	—	(83,636)
Loss on extinguishment of debt and facilities, net	—	—	—	—	—	—
Gain (loss) on investments	(4,809,567)	—	—	(3,089)	4,809,567	(3,089)
Other income (expense)	139	—	—	(4,074)	—	(3,935)
Income (loss) before income taxes	(5,067,444)	(54)	—	(4,807,212)	4,809,567	(5,065,143)
Income tax expense	—	—	(1,629)	(672)	—	(2,301)
Net income (loss)	$(5,067,444)	$ (54)	$ (1,629)	$ (4,807,884)	$ 4,809,567	$ (5,067,444)

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

SIRIUS XM RADIO INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATING STATEMENT OF STOCKHOLDERS' EQUITY (DEFICIT) AND COMPREHENSIVE LOSS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009

(in thousands)	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non-Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Balance at December 31, 2008	$(1,537,899)	$ (155)	$ 68,416	$ (593,948)	$ 2,072,123	$ 8,537
Net income (loss)	(519,092)	(222)	(1,611)	(359,180)	523,148	(356,957)
Other comprehensive loss:						
Unrealized gain on available-for-sale securities, net of tax	579	—	—	579	(579)	579
Foreign currency translation adjustment, net of tax	694	—	—	694	(694)	694
Total comprehensive loss	(517,819)	(222)	(1,611)	(357,907)	521,875	(355,684)
Issuance of preferred stock - - related party, net of issuance costs	224,004	—	—	—	—	224,004
Issuance of common stock to employees and employee benefit plans, net of forfeitures	1,926	—	—	—	—	1,926
Structuring fee on 10% Senior PIK Notes due 2011	5,918	—	—	—	—	5,918
Share-based payment expense	56,500	—	—	—	—	56,500
Issuance of restricted stock units in satisfaction of accrued compensation	31,280					31,280
Exchange of 2½% Convertible Notes due 2009, including accrued interest	35,164					35,164
Contributed capital	—	—	—	119,198	(119,198)	—
Balance at September 30, 2009	$(1,700,926)	$ (377)	$ 66,805	$ (832,657)	$ 2,474,800	$ 7,645

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

SIRIUS XM RADIO INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009

(in thousands)	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non-Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Net cash provided by (used in) operating activities	$ 25,668	$ 5,058	$ —	$ 228,562	$ (6,181)	$ 253,107
Cash flows from investing activities:						
Additions to property and equipment	(173,466)	(5,058)	—	(38,811)	—	(217,335)
Purchases of restricted and other investments	—	—	—	—	—	—
Merger related costs	—	—	—	—	—	—
Sale of restricted and other investments	—	—	—	—	—	—
Net cash used in investing activities	(173,466)	(5,058)	—	(38,811)	—	(217,335)
Cash flows from financing activities:						
Preferred stock issuance costs, net	(3,712)	—	—	—	—	(3,712)
Long-term borrowings, net of costs	186,571	—	—	387,184	6,181	579,936
Related party long-term borrowings, net of costs	269,871	—	—	95,093	—	364,964
Short-term financings	2,220	—	—	—	—	2,220
Payment of premiums on redemption of debt	—	—	—	(17,075)	—	(17,075)
Repayment of related party long-term borrowings, net of costs	(251,247)	—	—	(100,000)		(351,247)
Repayment of long-term borrowings	(175,205)	—	—	(435,727)	—	(610,932)
Net cash provided by (used in) financing activities	28,498	—	—	(70,525)	6,181	(35,846)
Net (decrease) increase in cash and cash equivalents	(119,300)	—	—	119,226	—	(74)
Cash and cash equivalents at beginning of period	173,647	—	—	206,799	—	380,446
Cash and cash equivalents at end of period	$ 54,347	$ —	$ —	$ 326,025	$ —	$ 380,372

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

SIRIUS XM RADIO INC. AND SUBSIDIARIES
UNAUDITED CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2008

(in thousands)	Sirius XM Radio Inc.	Sirius Asset Mgmt LLC	Satellite CD Radio	Non-Guarantors	Eliminations	Consolidated Sirius XM Radio Inc.
Net cash (used in) provided by operating activities	$ (220,763)	$ 6,744	$ —	$ (2,973)	$ —	$ (216,992)
Cash flows from investing activities:						
Additions to property and equipment	(88,068)	(6,744)	—	(7,893)	—	(102,705)
Sales of property and equipment	105	—	—	—	—	105
Purchases of restricted and other investments	(3,000)	—	—	—	—	(3,000)
Merger related costs	(13,047)	—	—	—	—	(13,047)
Acquisition of acquired entity cash	—	—	—	—	819,521	819,521
Sale of restricted and other investments	40,242	—	—	25,400	—	65,642
Net cash (used in) provided by investing activities	(63,768)	(6,744)	—	17,507	819,521	766,516
Cash flows from financing activities:						
Proceeds from exercise of warrants and stock options	471	—	—	—	—	471
Long-term borrowings, net of costs	—	—	—	533,941	—	533,941
Payments to minority interest holder	—	—	—	(61,880)	—	(61,880)
Payment of premiums on redemption of debt	—	—	—	(18,693)	—	(18,693)
Repayment of long-term borrowings	(1,875)	—	—	(1,080,553)	—	(1,082,428)
Other	—	—	—	(98)	—	(98)
Net cash used in financing activities	(1,404)	—	—	(627,283)	—	(628,687)
Net (decrease) increase in cash and cash equivalents	(285,935)	—	—	(612,749)	819,521	(79,163)
Cash and cash equivalents at beginning of period	430,226	—	—	828,115	(819,521)	438,820
Cash and cash equivalents at end of period	$ 144,291	$ —	$ —	$ 215,366	$ —	$ 359,657

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

(All dollar amounts referenced in this Item 2 are in thousands, unless otherwise stated)

Special Note Regarding Forward-Looking Statements

The following cautionary statements identify important factors that could cause our actual results to differ materially from those projected in forward-looking statements made in this Quarterly Report on Form 10-Q and in other reports and documents published by us from time to time. Any statements about our beliefs, plans, objectives, expectations, assumptions, future events or performance are not historical facts and may be forward-looking. These statements are often, but not always, made through the use of words or phrases such as "will likely result," "are expected to," "will continue," "is anticipated," "estimated," "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, 2008 (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.

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

- the substantial indebtedness of SIRIUS, XM Holdings and XM;
- the useful life of our satellites, which have experienced component failures including, with respect to a number of satellites, failures on their solar arrays, and, in certain cases, are not insured;
- our dependence upon automakers, many of which have experienced a dramatic drop in sales and are in financial distress, and other third parties, such as manufacturers and distributors of satellite radios, retailers and programming providers; and
- the competitive position of SIRIUS and XM versus other forms of audio and video entertainment including terrestrial radio, HD radio, internet radio, mobile phones, iPods and other MP3 devices, and emerging next-generation networks and technologies.

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

Executive Summary

We broadcast our music, sports, news, talk, entertainment, traffic and weather channels in the United States on a subscription fee basis through our proprietary satellite radio systems — the SIRIUS system and the XM system. On July 28, 2008, our wholly owned subsidiary, Vernon Merger Corporation, merged (the "Merger") with and into XM Satellite Radio Holdings Inc. and, as a result, XM Satellite Radio Holdings Inc. is now our wholly owned subsidiary. The SIRIUS system consists of four in-orbit satellites, over 125 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. The XM system consists of four in-orbit satellites, over 650 terrestrial repeaters that receive and retransmit signals, satellite uplink facilities and studios. Subscribers can also receive certain of our music and other channels over the Internet, including through an app on the Apple iPhone.

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

As of September 30, 2009, we had 18,515,730 subscribers. Our subscriber totals include subscribers under our regular pricing plans; discounted pricing plans; subscribers that have prepaid, including payments either made or due from automakers and dealers for prepaid subscriptions included in the sale or lease price of a vehicle; certain radios activated for daily rental fleet programs; subscribers to SIRIUS Internet Radio and XM Radio Online, our Internet services; and certain subscribers to our weather, traffic, data and video services.

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

In August 2009, we began charging our subscribers a U.S. Music Royalty Fee (the "MRF"). The MRF is $1.98 a month on our base subscriptions and $.97 for plans that are eligible for a second radio discount. The MRF also varies depending upon subscriber package and plan term. Amounts we collect through the MRF are included in Other revenue on our unaudited consolidated statements of operations. The FCC decision approving the Merger permits us to pass through to subscribers increases in music royalties since March 20, 2007, the date we asked the FCC to approve the Merger. The MRF is the implementation of that FCC decision.

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

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

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

Unaudited Actual and Pro Forma Information

Our discussion of our unaudited pro forma information includes non-GAAP financial results that assume the Merger occurred on January 1, 2008. These financial results exclude the impact of purchase price accounting adjustments and refinancing transactions related to the Merger. The discussion also includes the following non-GAAP financial measures: average self-pay monthly churn; conversion rate; average monthly revenue per subscriber, or ARPU; subscriber acquisition cost, or SAC, as adjusted, per gross subscriber addition; customer service and billing expenses, as adjusted, per average subscriber; free cash flow; and adjusted income (loss) from operations. We believe this non-GAAP financial information provides meaningful supplemental information regarding our operating performance and is used for internal management purposes, when publicly providing the business outlook, and as a means to evaluate period-to-period comparisons. Please refer to the footnotes (pages 53 through 62) following our discussion of results of operations for the definitions and a further discussion of the usefulness of such non-GAAP financial information and reconciliation to GAAP.

Subscriber and Key Operating Metrics. The following tables contain our actual and pro forma subscriber and key operating metrics for the three and nine months ended September 30, 2009 and 2008, respectively:

Unaudited Actual and Pro Forma Quarterly Subscribers and Metrics:

	Unaudited			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009 (Actual)	2008 (Pro Forma)	2009 (Actual)	2008 (Pro Forma)
Beginning subscribers	18,413,435	18,576,830	19,003,856	17,348,622
Gross subscriber additions	1,606,446	1,843,785	4,325,532	5,997,096
Deactivated subscribers	(1,504,151)	(1,499,704)	(4,813,658)	(4,424,807)
Net additions	102,295	344,081	(488,126)	1,572,289
Ending subscribers	18,515,730	18,920,911	18,515,730	18,920,911
Retail	7,925,904	9,036,420	7,925,904	9,036,420
OEM	10,488,530	9,777,704	10,488,530	9,777,704
Rental	101,296	106,787	101,296	106,787
Ending subscribers	18,515,730	18,920,911	18,515,730	18,920,911
Retail	(309,972)	(149,417)	(979,298)	(202,295)
OEM	407,131	492,216	492,692	1,744,436
Rental	5,136	1,282	(1,520)	30,148
Net additions	102,295	344,081	(488,126)	1,572,289
Self-pay	15,456,748	15,190,588	15,456,748	15,190,588
Paid promotional	3,058,982	3,730,323	3,058,982	3,730,323
Ending subscribers	18,515,730	18,920,911	18,515,730	18,920,911
Self-pay	35,405	361,438	(92,838)	1,317,242
Paid promotional	66,890	(17,357)	(395,288)	255,047
Net additions	102,295	344,081	(488,126)	1,572,289
Daily weighted average number of subscribers	18,393,678	18,710,940	18,514,041	18,187,927

	Unaudited Pro Forma			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Average self-pay monthly churn (1)(7)	2.0%	1.7%	2.1%	1.7%
Conversion rate (2)(7)	46.8%	47.0%	45.3%	49.2%
ARPU (3)(7)	$ 10.87	$ 10.51	$ 10.67	$ 10.53
SAC, as adjusted, per gross subscriber addition (4)(7)	$ 69	$ 74	$ 63	$ 76
Customer service and billing expenses, as adjusted, per average subscriber (5)(7)	$ 1.01	$ 1.05	$ 1.04	$ 1.08
Total revenue	$ 629,607	$ 612,776	$ 1,842,924	$ 1,792,632
Free cash flow (6)(7)	$ 26,724	$ (97,594)	$ 35,772	$ (577,648)
Adjusted income (loss) from operations (8)	$ 106,140	$ (36,851)	$ 347,198	$ (168,096)
Net loss	$ (181,935)	$ (217,010)	$ (416,090)	$ (653,867)

Note: See pages 53 through 62 for footnotes.

Subscribers. At September 30, 2009 we had 18,515,730 subscribers, a decrease of 405,181 subscribers, or 2%, from the 18,920,911 subscribers as of September 30, 2008. The decrease was principally the result of 671,341 fewer paid promotional trials due to the decline in North American auto sales. This decline was partially offset by an increase of 266,160 in self-pay subscribers compared to September 30, 2008. Gross subscriber additions decreased approximately 13% and 28% during the three and nine months ended September 30, 2009 compared to the three and nine months ended September 30, 2008, respectively. OEM gross subscriber additions decreased due to the decline in North American automobile sales and retail gross subscriber additions decreased due to declines in consumer spending. Deactivation rates for self-pay subscriptions in the quarter increased to 2.0% per month reflecting reductions in consumer discretionary spending, subscriber response to our increase in prices for multi-subscription accounts, channel line-up changes in 2008, the institution of a monthly charge for our streaming service and the introduction of the U.S. Music Royalty Fee.

ARPU. ARPU is derived from total earned subscriber revenue and net advertising revenue, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. See accompanying footnotes for more details.

- *Three Months*: For the three months ended September 30, 2009 and 2008, total ARPU was $10.87 and $10.51, respectively. The increase was driven mainly by the sale of "Best of" programming, increased rates on our multi-subscription packages and revenues earned on our internet packages, partially offset by lower ad revenue.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, total ARPU was $10.67 and $10.53, respectively. Increases in subscriber revenue were driven mainly by the sale of "Best of" programming, increased rates on our multi-subscription packages and revenues earned on our internet packages, partially offset by lower ad revenue.

SAC, As Adjusted, Per Gross Subscriber Addition. SAC, as adjusted, per gross subscriber addition is derived from subscriber acquisition costs and margins from the direct sale of radios and accessories, excluding share-based payment expense, divided by the number of gross subscriber additions for the period. See accompanying footnotes for more details.

- *Three Months*: For the three months ended September 30, 2009 and 2008, SAC, as adjusted, per gross subscriber addition was $69 and $74, respectively. The decrease in SAC was primarily due to lower OEM subsidies and lower aftermarket inventory settlements partially offset by higher OEM subsidies on installations compared to the three months ended September 30, 2008.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, SAC, as adjusted, per gross subscriber addition was $63 and $76, respectively. The decrease was primarily driven by fewer OEM installations relative to gross subscriber additions, decreased production of certain radios, lower OEM subsidies and lower aftermarket inventory settlements in the nine months ended September 30, 2009 compared to the nine months ended September 30, 2008.

Customer Service and Billing Expenses, As Adjusted, Per Average Subscriber. Customer service and billing expenses, as adjusted, per average subscriber is derived from total customer service and billing expenses, excluding share-based payment expense, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. See accompanying footnotes for more details.

- *Three Months*: For the three months ended September 30, 2009 and 2008, customer service and billing expenses, as adjusted, per average subscriber was $1.01 and $1.05, respectively. The decline was primarily due to decreases in personnel costs and customer call center expenses.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, customer service and billing expenses, as adjusted, per average subscriber was $1.04 and $1.08, respectively. The decline was primarily due to decreases in personnel costs and customer call center expenses.

Adjusted Income (Loss) from Operations. We refer to net loss before interest and investment income; interest expense, net of amounts capitalized; income tax expense, loss on extinguishment of debt and credit facilities, net; gain (loss) on investments, other expense (income), restructuring, impairments and related costs, depreciation and amortization, and share-based payment expense as adjusted income (loss) from operations. See accompanying footnotes for more details.

- *Three Months*: For the three months ended September 30, 2009 and 2008, our adjusted income (loss) from operations was $106,140 and ($36,851), respectively. Adjusted income (loss) from operations was favorably impacted by an increase of 3%, or $16,831, in revenues and a decrease of 19%, or $126,160, in total expenses included in adjusted income (loss) from operations. The increase in revenue was due mainly to increased rates on multi-subscription packages, revenues earned on internet packages, the introduction of the U.S. Music Royalty Fee and the sale of "Best of" programming. The decreases in expenses were primarily driven by lower Subscriber acquisition costs, lower Sales and marketing discretionary spend, savings in Programming and content expenses, and lower legal and consulting costs in General and administrative expenses.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, our adjusted income (loss) from operations was $347,198 and ($168,096), respectively. Adjusted income (loss) from operations was favorably impacted by an increase of 3%, or $50,292, in revenues and a decrease of 24%, or $465,002, in total expenses included in adjusted income (loss) from operations. The increase in revenue was due mainly to an increase in weighted average subscribers as well as increased rates on multi-subscription packages, revenues earned on internet packages, the introduction of the U.S. Music Royalty Fee and the sale of "Best of" programming. The decreases in expenses were primarily driven by lower Subscriber acquisition costs, lower Sales and marketing discretionary spend, savings in Programming and content expenses, and lower legal and consulting costs in General and administrative expenses.

Unaudited Pro Forma Results of Operations. Set forth below are certain pro forma items that give effect to the Merger as if it had occurred on January 1, 2008. The pro forma information below does not give effect to any adjustments as a result of the purchase price accounting for the Merger, or the goodwill impairment charge taken during 2008. See footnote 8 (pages 54 to 55) for a reconciliation of net loss to adjusted income (loss) from operations.

	Unaudited Pro Forma			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenue:				
Subscriber revenue, including effects of rebates	$ 587,442	$ 572,355	$ 1,740,477	$ 1,669,700
Advertising revenue, net of agency fees	12,418	17,867	37,287	54,156
Equipment revenue	10,506	12,856	31,343	38,687
Other revenue	19,241	9,698	33,817	30,089
Total revenue	629,607	612,776	1,842,924	1,792,632
Operating expenses:				
Satellite and transmission	18,676	25,136	57,077	76,336
Programming and content	93,230	131,630	277,614	341,422
Revenue share and royalties	123,531	120,800	362,463	355,251
Customer service and billing	55,795	58,857	173,517	177,159
Cost of equipment	11,944	16,179	27,988	48,020
Sales and marketing	52,827	78,178	152,039	260,583
Subscriber acquisition costs	109,384	132,477	274,082	444,396
General and administrative	48,481	75,981	142,812	215,440
Engineering, design and development	9,599	10,389	28,134	42,121
Depreciation and amortization	47,997	64,111	145,596	196,051
Share-based payment expense	18,799	29,809	71,301	99,673
Restructuring, impairments and related costs	2,554	7,430	30,167	7,457
Total operating expenses	592,817	750,977	1,742,790	2,263,909
Income (loss) from operations	36,790	(138,201)	100,134	(471,277)
Other expense	(217,610)	(77,086)	(512,880)	(178,777)
Loss before income taxes	(180,820)	(215,287)	(412,746)	(650,054)
Income tax expense	(1,115)	(1,723)	(3,344)	(3,813)
Net loss	$ (181,935)	$ (217,010)	$ (416,090)	$ (653,867)

Highlights for the Three Months Ended September 30, 2009. Our revenue grew 3%, or $16,831, in the three months ended September 30, 2009 compared to the same period in 2008. Subscriber revenue increased 3%, or $15,087, in the three months ended September 30, 2009 compared to the same period in 2008. The increase in subscriber revenue was driven by the sale of "Best of" programming and the rate increases to our multi-subscription and internet packages. Advertising revenue decreased 30%, or $5,449, in the three months ended September 30, 2009 compared to the same period in 2008. The decrease in advertising revenue was driven by the current economic environment. Equipment revenue decreased 18%, or $2,350, in the three months ended September 30, 2009 compared to the same period in 2008. The decrease in equipment revenue was driven by declines in sales through our direct to consumer distribution channel. Other revenue increased 98%, or $9,543, in the three months ended September 30, 2009 compared to the same period in 2008. The increase in other revenue was driven by the U.S. Music Royalty Fee introduced this quarter. The overall increase in revenue, combined with a decrease of 19%, or $126,160, in adjusted operating costs (total operating expense excluding restructuring, impairments and related costs, depreciation and amortization and share-based payment expense), resulted in improved adjusted income (loss) from operations of $106,140 in the three months ended September 30, 2009 compared to ($36,851) in the same period in 2008.

Satellite and transmission costs decreased 26%, or $6,460, in the three months ended September 30, 2009 compared to the same period in 2008 due to reductions in maintenance costs, repeater lease expense and personnel costs. Programming and content costs decreased 29%, or $38,400, in the three months ended September 30, 2009 compared to the same period in 2008, due mainly to a $27,500 one-time payment recognized in 2008 to a programming provider upon completion of the Merger, reductions in personnel and on-air talent costs as well as savings on certain content agreements. Revenue share and royalties increased 2%, or $2,731, in the three months ended September 30, 2009 compared to the same period in 2008 primarily due to an increase in our revenues and an increase in the statutory royalty rate for the performance of sound recordings. Customer service and billing costs decreased 5%, or $3,062, in the three months ended September 30, 2009 compared to the same period in 2008 primarily due to decreases in personnel costs and customer call center expenses. Cost of equipment decreased 26%, or $4,235, in the three months ended September 30, 2009 compared to the same period in 2008 as a result of a decrease in our direct to customer sales and lower inventory write-downs.

Sales and marketing costs decreased 32%, or $25,351, and decreased as a percentage of revenue to 8% from 13% in the three months ended September 30, 2009 compared to the same period in 2008 due to reduced advertising and cooperative marketing spend as well as reductions to personnel costs and third party distribution support expenses. Subscriber acquisition costs decreased 17%, or $23,093, and decreased as a percentage of revenue to 17% from 22% in the three months ended September 30, 2009 compared to the same period in 2008. This improvement was driven by fewer OEM installations relative to gross subscriber additions, decreased production of certain radios, lower OEM subsidies and lower aftermarket inventory reserves as compared to the three months ended September 30, 2008. Subscriber acquisition costs also decreased as a result of the 13% decline in gross additions during the three months ended September 30, 2009 compared to the three months ended September 30, 2008.

General and administrative costs decreased 36%, or $27,500, in the three months ended September 30, 2009 compared to the same period in 2008 mainly due to the absence of certain legal and regulatory charges incurred in 2008 and lower personnel costs. Engineering, design and development costs decreased 8%, or $790, in the three months ended September 30, 2009 compared to the same period in 2008, due to lower costs associated with manufacturing of radios, OEM tooling and manufacturing, and personnel.

Restructuring, impairments and related costs decreased 66%, or $4,876, in the three months ended September 30, 2009 compared to the same period in 2008 mainly due to fewer restructuring charges associated with the Merger.

Other expenses increased 182%, or $140,524, in the three months ended September 30, 2009 compared to the same period in 2008 driven mainly by the Loss on extinguishment of debt and credit facilities of $138,053, and an increase in Interest expense of $11,554, offset by an increase of $7,491 in Gain on investments. The Loss on the extinguishment of debt and credit facilities was incurred on the full repayment of SIRIUS' LM Credit Agreement. Interest expense increased due primarily to the issuance of XM's 13% Senior Notes due 2013 and the 7% Exchangeable Senior Subordinated Notes due 2014 in the third quarter of 2008.

Highlights for the Nine Months Ended September 30, 2009. Our subscriber revenue grew 4%, or $70,777, in the nine months ended September 30, 2009 compared to the same period in 2008. Advertising revenue decreased 31%, or $16,869, in the nine months ended September 30, 2009 compared to the same period in 2008. The decrease in advertising revenue was driven by the current economic environment. Equipment revenue decreased 19%, or $7,344, in the nine months ended September 30, 2009 compared to the same period in 2008. The decrease in equipment revenue was driven by declines in sales through our direct to consumer distribution channel. Other revenue increased 12%, or $3,728, in the nine months ended September 30, 2009 compared to the same period in 2008. The increase in other revenue was driven by the U.S. Music Royalty Fee introduced this quarter. Total revenue increased 3%, or $50,292, and combined with a decrease of 24%, or $465,002, in adjusted operating costs (total operating expenses excluding restructuring, impairments and related costs, depreciation and amortization and share-based payment expense), resulted in improved adjusted income (loss) from operations of $347,198 in the nine months ended September 30, 2009 compared to ($168,096) in 2008.

Satellite and transmission costs decreased 25%, or $19,259, in the nine months ended September 30, 2009 compared to the same period in 2008 due to reductions in maintenance costs, repeater lease expense, and personnel costs. Programming and content costs decreased 19%, or $63,808, in the nine months ended September 30, 2009 compared to the same period in 2008, due mainly to a $27,500 one-time payment recognized in 2008 to a programming provider upon completion of the Merger, to reductions in personnel and on-air talent costs as well as savings on certain content agreements. Revenue share and royalties increased 2%, or $7,212, in the nine months ended September 30, 2009 compared to the same period in 2008. Customer service and billing costs decreased 2%, or $3,642, in the nine months ended September 30, 2009 compared to the same period in 2008 due to scale efficiencies over a larger subscriber base. Cost of equipment decreased 42%, or $20,032, in the nine months ended September 30, 2009 compared to the same period in 2008 as a result of a decrease in direct to customer sales and lower inventory write-downs.

Sales and marketing costs decreased 42%, or $108,544, and decreased as a percentage of revenue to 8% from 15% in the nine months ended September 30, 2009 compared to the same period in 2008 due to reduced advertising and cooperative marketing spend as well as reductions to personnel costs and third party distribution support expenses. Subscriber acquisition costs decreased 38%, or $170,314, and decreased as a percentage of revenue to 15% from 25% in the nine months ended September 30, 2009 compared to the same period in 2008. This decrease was driven by a 17% improvement in SAC, as adjusted, per gross addition due to fewer OEM installations relative to gross subscriber additions, decreased production of certain radios, lower OEM subsidies and lower aftermarket inventory reserves in the nine months ended September 30, 2009 compared to the nine months ended September 30, 2008. Subscriber acquisition costs also decreased as a result of the 28% decline in gross additions during the nine months ended September 30, 2009.

General and administrative costs decreased 34%, or $72,628, mainly due to the absence of certain legal and regulatory charges incurred in 2008 and lower personnel costs. Engineering, design and development costs decreased 33%, or $13,987, in the nine months ended September 30, 2009 compared to the same period in 2008, due to lower costs associated with manufacturing of radios, OEM tooling and manufacturing, and personnel.

Restructuring, impairments and related costs increased 305%, or $22,710, mainly due to a loss of $24,196 on capitalized installment payments, which are expected to provide no future benefit due to the counterparty's bankruptcy filing, for the launch of a satellite, offset partially by a decrease in personnel related restructuring costs.

Other expenses increased 187%, or $334,103, in the nine months ended September 30, 2009 compared to the same period in 2008 driven mainly by the increase in Loss on extinguishment of debt and credit facilities of $263,767 and an increase in Interest expense of $90,297, offset by an increase of $16,556 in Gain on investments. The Loss on the extinguishment of debt and credit facilities was incurred on the full repayment of SIRIUS' LM Credit Agreement and XM's Amended and Restated Credit Agreement and XM's Second-Lien Credit Agreement. Interest expense increased due primarily to the issuance of XM's 13% Senior Notes due 2013 and the 7% Exchangeable Senior Subordinated Notes due 2014 in the third quarter of 2008.

Unaudited Actual Results of Operations

Our discussion of our unaudited actual results of operations includes the following non-GAAP financial measures: average self-pay monthly churn; conversion rate; average monthly revenue per subscriber, or ARPU; subscriber acquisition cost, or SAC, as adjusted, per gross subscriber addition; customer service and billing expenses, as adjusted, per average subscriber; free cash flow; and adjusted income (loss) from operations. We believe these non-GAAP financial measures provide meaningful supplemental information regarding our operating performance and are used for internal management purposes, when publicly providing the business outlook, and as a means to evaluate period-to-period comparisons. Please refer to the footnotes (pages 53 through 62) following our discussion of results of operations for the definitions and a further discussion of the usefulness of such non-GAAP financial measures.

The discussion of our results of operations for the three and nine months ended September 30, 2009 and 2008 includes the financial results of XM from the date of the Merger. The inclusion of these results may render direct comparisons with results for prior periods less meaningful. Accordingly, the discussion below addresses trends we believe are significant.

Subscriber and Key Operating Metrics. The following tables contain our actual subscribers and key operating metrics for the three and nine months ended September 30, 2009 and 2008:

Unaudited Actual Quarterly Subscribers and Metrics:

	Unaudited Actual			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Beginning subscribers	18,413,435	8,924,139	19,003,856	8,321,785
Gross subscriber additions	1,606,446	11,208,193	4,325,532	13,240,902
Deactivated subscribers	(1,504,151)	(1,211,421)	(4,813,658)	(2,641,776)
Net additions	102,295	9,996,772	(488,126)	10,599,126
Ending subscribers	18,515,730	18,920,911	18,515,730	18,920,911
Retail	7,925,904	9,036,420	7,925,904	9,036,420
OEM	10,488,530	9,777,704	10,488,530	9,777,704
Rental	101,296	106,787	101,296	106,787
Ending subscribers	18,515,730	18,920,911	18,515,730	18,920,911
Retail	(309,972)	4,359,721	(979,298)	4,395,710
OEM	407,131	5,546,161	492,692	6,112,073
Rental	5,136	90,890	(1,520)	91,343
Net additions	102,295	9,996,772	(488,126)	10,599,126
Self-pay	15,456,748	15,190,588	15,456,748	15,190,588
Paid promotional	3,058,982	3,730,323	3,058,982	3,730,323
Ending subscribers	18,515,730	18,920,911	18,515,730	18,920,911
Self-pay	35,405	9,048,281	(92,838)	9,505,524
Paid promotional	66,890	948,491	(395,288)	1,093,602
Net additions	102,295	9,996,772	(488,126)	10,599,126
Daily weighted average number of subscribers	18,393,678	15,472,506	18,514,041	10,887,028

	Unaudited Actual			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Average self-pay monthly churn (1)(7)	2.0%	1.7%	2.1%	1.7%
Conversion rate (2)(7)	46.8%	47.0%	45.3%	49.1%
ARPU (7)(10)	$ 10.71	$ 10.19	$ 10.42	$ 10.33
SAC, as adjusted, per gross subscriber addition (7)(11)	$ 57	$ 60	$ 53	$ 74
Customer service and billing expenses, as adjusted, per average subscriber (7)(12)	$ 1.01	$ 1.01	$ 1.04	$ 0.98
Total revenue	$ 618,656	$ 488,443	$ 1,796,464	$ 1,041,809
Free cash flow (7)(13)	$ 26,724	$ (52,722)	$ 35,772	$ (270,344)
Adjusted income (loss) from operations (14)	$ 158,683	$ 22,091	$ 473,996	$ (41,124)
Net loss	$ (149,190)	$ (4,879,427)	$ (356,957)	$ (5,067,444)

Note: See pages 53 through 62 for footnotes.

Subscribers. At September 30, 2009 we had 18,515,730 subscribers, a decrease of 405,181 subscribers, or 2%, from the 18,920,911 subscribers as of September 30, 2008. The decrease was principally the result of 671,341 fewer paid promotional trials due to the decline in North American auto sales. This decline was partially offset by an increase of 266,160 in self-pay subscribers compared to September 30, 2008. Deactivation rates for self-pay subscriptions in the quarter increased to 2.0% per month reflecting reductions in consumer discretionary spending, subscriber response to our increase in prices for multi-subscription accounts, channel line-up changes in 2008, the institution of a monthly charge for our streaming service and the introduction of the U.S. Music Royalty Fee.

ARPU. ARPU is derived from total earned subscriber revenue and net advertising revenue, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. See accompanying footnotes for more details.

- *Three Months*: For the three months ended September 30, 2009 and 2008, total ARPU was $10.71 and $10.19, respectively. The increase was driven by the revenues earned for "Best of" programming, increased rates on multi-subscription packages and internet subscriptions.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, total ARPU was $10.42 and $10.33, respectively. The increase was driven by the revenues earned for "Best of" programming, increased rates on multi-subscription packages and internet subscriptions.

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

SAC, As Adjusted, Per Gross Subscriber Addition. SAC, as adjusted, per gross subscriber addition is derived from subscriber acquisition costs and margins from the direct sale of radios and accessories, excluding share-based payment expense, divided by the number of gross subscriber additions for the period. See accompanying footnotes for more details.

- *Three Months*: For the three months ended September 30, 2009 and 2008, SAC, as adjusted, per gross subscriber addition was $57 and $60, respectively. The decrease in SAC was attributed to lower OEM subsidies, decreased production of certain radios, lower aftermarket inventory reserves and improved equipment margins, offset by an additional month of XM subscriber acquisition costs in the three months ended September 30, 2009 compared to the prior year period.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, SAC, as adjusted, per gross subscriber addition was $53 and $74, respectively. The decrease was primarily driven by the effect of purchase price accounting adjustments, lower OEM subsidies, decreased production of certain radios, lower aftermarket inventory reserves and improved equipment margins in the nine months ended September 30, 2009 compared to the prior year period.

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

Customer Service and Billing Expenses, As Adjusted, Per Average Subscriber. Customer service and billing expenses, as adjusted, per average subscriber is derived from total customer service and billing expenses, excluding share-based payment expense, divided by the number of months in the period, divided by the daily weighted average number of subscribers for the period. See accompanying footnotes for more details.

- *Three Months:* For each of the three months ended September 30, 2009 and 2008, customer service and billing expenses, as adjusted, per average subscriber was $1.01.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, customer service and billing expenses, as adjusted, per average subscriber was $1.04 and $0.98, respectively. The increase was primarily due to the inclusion of XM, which has historically experienced higher customer service and billing expenses.

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

Adjusted Income (Loss) from Operations. We refer to net loss before interest and investment income; interest expense, net of amounts capitalized; income tax expense, loss on extinguishment of debt and credit facilities, net; gain (loss) on investments, other expense (income), restructuring, impairments and related costs, depreciation and amortization, and share-based payment expense as adjusted income (loss) from operations. See accompanying footnotes for more details.

- *Three Months*: For the three months ended September 30, 2009 and 2008, our adjusted income (loss) from operations was $158,683 and $22,091, respectively. Adjusted income (loss) from operations was favorably impacted by the $130,213 increase in revenues, and the $6,379 decrease in expenses included in adjusted income (loss) from operations. The increase was due primarily to the inclusion of XM.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, our adjusted income (loss) from operations was $473,996 and ($41,124), respectively. Adjusted income (loss) from operations was favorably impacted by the $754,655 increase in revenues, partially offset by the $239,535 increase in expenses included in adjusted income (loss) from operations. The increase was due primarily to the inclusion of XM.

Three and Nine Months Ended September 30, 2009 Compared with Three and Nine Months Ended September 30, 2008 — Actual

Total Revenue

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, subscriber revenue was $578,304 and $458,237, respectively, an increase of 26% or $120,067. The Merger was responsible for approximately $95,684 of the increase and the remaining increase was primarily attributable to the sale of "Best of" programming and increased internet and multi-subscription rates.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, subscriber revenue was $1,699,455 and $980,396, respectively, an increase of 73% or $719,059. The Merger was responsible for approximately $670,870 of the increase and the remaining increase was primarily attributable to the sale of "Best of" programming and increased internet and multi-subscription rates, as well as higher average subscribers.

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

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Subscription fees	$ 573,611	$ 453,540	$ 1,683,568	$ 963,454
Activation fees	5,171	4,920	16,929	17,271
Effect of rebates	(478)	(223)	(1,042)	(329)
Total subscriber revenue	$ 578,304	$ 458,237	$ 1,699,455	$ 980,396

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

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, net advertising revenue was $12,418 and $14,674, respectively, which represents a decrease of 15%, or $2,256. The decrease in ad revenue was due to the current economic environment.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, net advertising revenue was $37,287 and $31,413, respectively, which represents an increase of 19%, or $5,874. The increase was due to the inclusion of XM revenue from the Merger, which was offset by a decrease in ad revenue due to the current economic environment.

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

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, equipment revenue was $10,506 and $11,271 respectively, which represents a decrease of 7%, or $765. The equipment revenue decrease was mainly due to a decrease in sales through our direct to consumer distribution channel partially offset by the inclusion of XM revenue from the Merger.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, equipment revenue was $31,343 and $25,290 respectively, which represents an increase of 24%, or $6,053. The Merger was responsible for approximately $13,397 of the increase. The equipment revenue increase was partially offset by a decrease in sales through our direct to consumer distribution channel.

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

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 September 30, 2009 and 2008, satellite and transmission expenses were $19,542 and $19,526, respectively, remaining relatively flat. The inclusion of a full quarter of XM's satellite and transmission expense was offset by reductions in personnel costs and maintenance.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, satellite and transmission expenses were $59,435 and $34,800, respectively, which represents an increase of 71%, or $24,635. The satellite and transmission increase was primarily due to the inclusion of XM's satellite and transmission expense, partially offset by decreases due to the elimination of contracts, decommissioned repeater sites, and decrease in web-streaming costs.

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

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, programming and content expenses were $78,315 and $106,037, respectively, which represents a decrease of 26%, or $27,722. The decrease was primarily due to a $27,500 one-time payment recognized in 2008 to a programming provider upon completion of the Merger, savings on content agreements, and personnel and on-air talent costs, which were partially offset by a full quarter of XM's programming and content expense.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, programming and content expenses were $230,825 and $222,975, respectively, which represents an increase of 4%, or $7,850. The increase was due to the inclusion of XM's programming and content expense, which was partially offset by decreases due to a $27,500 one-time payment recognized in 2008 to a programming provider upon completion of the Merger, the impact of the Merger, and by savings on content agreements, personnel and on-air talent costs.

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

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, revenue share and royalties were $100,558 and $85,592, respectively, which represents an increase of 17%, or $14,966. The increase was primarily attributable to the inclusion of a full quarter of XM's revenue share and royalty expense as a result of the Merger, an increase in our revenues and an increase in the statutory royalty rate for the performance of sound recordings.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, revenue share and royalties were $296,855 and $177,635, respectively, which represents an increase of 67%, or $119,220. The increase was primarily attributable to the inclusion of XM's revenue share and royalty expense as a result of the Merger, an increase in our revenues and an increase in the statutory royalty rate for the performance of sound recordings.

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

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, customer service and billing expenses were $56,529 and $47,432, respectively, which represents an increase of 19%, or $9,097. The increase was primarily attributable to the inclusion of a full quarter of XM's customer service and billing expense as a result of the Merger and increased bad debt expense due to the current economic environment.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, customer service and billing expenses were $175,570 and $97,218, respectively, which represents an increase of 81%, or $78,352. The increase was primarily due to the inclusion of XM's customer and billing expense as a result of the Merger and increased bad debt expense due to the current economic environment.

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

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, cost of equipment was $11,944 and $13,773, respectively, which represents a decrease of 13%, or $1,829. The decrease was mainly due to lower sales volume through our direct to consumer channel and lower inventory related charges, offset by the inclusion of a full quarter of XM's cost of equipment expense as a result of the Merger.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, cost of equipment was $27,988 and $28,007, respectively, remaining relatively flat period over period. This was mainly due to lower sales volume through our direct to consumer channel and lower inventory related charges, offset by the inclusion of XM's cost of equipment expense as a result of the Merger.

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

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, sales and marketing expenses were $52,530 and $63,637, respectively, which represents a decrease of 17%, or $11,107. The decrease was primarily driven by reductions in consumer advertising and cooperative marketing, personnel costs and third party distribution support expenses, offset by the inclusion of a full quarter of XM's sales and marketing expense.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, sales and marketing expenses were $152,647 and $151,237, respectively, which represents an increase of 1%, or $1,410. The increase is due to the inclusion of XM's sales and marketing expense, partially offset by reductions in consumer advertising and cooperative marketing, personnel costs and third party distribution support expenses.

We expect sales and marketing expenses, excluding share-based payment expense, to decrease as we consolidate our advertising and promotional activities, gain efficiencies in marketing management and eliminate overlapping distribution support costs.

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, subscriber acquisition costs were $90,054 and $86,616, respectively, which represents an increase of 4%, or $3,438. This increase was primarily due to the inclusion of a full quarter of XM's subscriber acquisition costs, partially offset by lower OEM subsidies, and lower aftermarket inventory settlements in the three months ended September 30, 2009 compared to the three months ended September 30, 2008.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, subscriber acquisition costs were $230,773 and $257,832, respectively, which represents a decrease of 10%, or $27,059. This decrease was primarily due to lower OEM subsidies, and lower aftermarket inventory settlements in the nine months ended September 30, 2009 compared to the nine months ended September 30, 2008, partially offset by the inclusion of XM's subscriber acquisition costs as a result of the Merger.

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

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, general and administrative expenses were $56,923 and $57,310, respectively, remaining relatively flat, primarily due to the impact of the Merger, offset by lower costs for certain merger, litigation and regulatory matters.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, general and administrative expenses were $182,953 and $148,555, respectively, which represents an increase of 23%, or $34,398, primarily due to the impact of the Merger, offset by lower costs for certain merger, litigation and regulatory matters.

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

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, engineering, design and development expenses were $11,252 and $10,434, respectively, which represents an increase of 8%, or $818. This increase was primarily due to the inclusion of a full quarter of XM's engineering, design and development expenses, partially offset by lower costs associated with manufacturing of radios, OEM tooling and manufacturing, and personnel.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, engineering, design and development expenses were $32,975 and $28,091, respectively, which represents an increase of 17%, or $4,884. This increase was primarily due to the inclusion of XM's engineering, design and development expenses, partially offset by lower costs associated with manufacturing of radios, OEM tooling and manufacturing, and personnel.

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

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 September 30, 2009 and 2008, interest and investment income was $962 and $4,940, respectively. The decrease of 81%, or $3,978, was primarily attributable to lower interest rates in 2009 and a lower average cash balance.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, interest and investment income was $2,602 and $9,167, respectively. The decrease of 72%, or $6,565, was primarily attributable to lower interest rates in 2009 and a lower average cash balance.

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, interest expense was $78,527 and $49,216, respectively, which represents an increase of 60%, or $29,311. Interest expense increased significantly as a result of the Merger, due to additional debt and higher interest rates. Increases in interest expense were partially offset by the capitalized interest associated with satellite construction and related launch vehicles.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, interest expense was $240,062 and $83,636, respectively, which represents an increase of 187%, or $156,426. Interest expense increased significantly as a result of the Merger, due to additional debt and higher interest rates. Increases in interest expense were partially offset by the capitalized interest associated with satellite construction and related launch vehicles.

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, loss on extinguishment of debt and credit facilities, net, was $138,053 and $0, respectively. The loss was incurred on the retirement of the outstanding Term Loan and Purchase Money Loan borrowings from Liberty Media and the repurchase of a portion of XM Holdings' 10% Convertible Senior Notes due 2009.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, loss on extinguishment of debt and credit facilities, net, was $263,767 and $0, respectively. The loss was incurred on the retirement of the outstanding Term Loan and Purchase Money Loan borrowings from Liberty Media, the repurchase of a portion of XM Holdings' 10% Convertible Senior Notes due 2009, and the retirement of XM's Amended and Restated Credit Agreement and XM's Second-Lien Credit Agreement.

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

- *Three Months*: For the three months ended September 30, 2009 and 2008, loss on investment was $58 and $3,089, respectively. The decrease was attributable to payments received from SIRIUS Canada in excess of our carrying value of our investments, partially offset by our share of SIRIUS Canada's and XM Canada's net losses for the three months ended September 30, 2009.

- *Nine Months*: For the nine months ended September 30, 2009 and 2008, gain (loss) on investment was $457 and ($3,089), respectively. The increase was attributable to payments received from SIRIUS Canada in excess of our carrying value of our investments, partially offset by our share of SIRIUS Canada's and XM Canada's net losses for the nine months ended September 30, 2009 and an impairment charge related to our investment in XM Canada.

Income Taxes

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

- *Three Months*: We recorded income tax expense of $1,115 and $1,215 for the three months ended September 30, 2009 and 2008, respectively.

- *Nine Months*: We recorded income tax expense of $3,344 and $2,301 for the nine months ended September 30, 2009 and 2008, respectively. The increase is attributed to the inclusion of XM.

Liquidity and Capital Resources

Cash Flows for the Nine Months Ended September 30, 2009 Compared with Nine Months Ended September 30, 2008

As of September 30, 2009 and 2008, we had $380,372 and $359,657, respectively, in cash and cash equivalents and $380,446 as of December 31, 2008.

The following table presents a summary of our cash flow activity for the periods set forth below:

	For the Nine Months Ended September 30,		
	2009	2008	Variance
Net cash provided by (used in) operating activities	$ 253,107	$ (216,992)	$ 470,099
Net cash (used in) provided by investing activities	(217,335)	766,516	(983,851)
Net cash used in financing activities	(35,846)	(628,687)	592,841
Net decrease in cash and cash equivalents	(74)	(79,163)	79,089
Cash and cash equivalents at beginning of period	380,446	438,820	(58,374)
Cash and cash equivalents at end of period	$ 380,372	$ 359,657	$ 20,715

Cash Flows Provided by (Used in) Operating Activities

Net cash provided by operating activities increased $470,099 to $253,107 for the nine months ended September 30, 2009 from net cash used in operating activities of $216,992 for the nine months ended September 30, 2008. The increase was primarily the result of a decreased net loss, net of non-cash operating activities of $300,853, and a decrease in cash used in other operating assets and liabilities of $169,246.

Cash Flows (Used in) Provided by Investing Activities

Net cash used in investing activities increased $983,851 to $217,335 for the nine months ended September 30, 2009 from net cash provided by investing activities of $766,516 for the nine months ended September 30, 2008. The increase was primarily the result of a decrease of $819,521 in net cash acquired from XM in the Merger, a decrease of $65,642 from the sale of restricted and other investments and an increase in capital expenditures of $114,630 associated with our satellite construction and launch, partially offset by a decrease of $13,047 in Merger-related costs.

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

Cash Flows Used in Financing Activities

Net cash used in financing activities decreased $592,841 to $35,846 for the nine months ended September 30, 2009 from $628,687 for the nine months ended September 30, 2008. The decrease in cash used in financing activities was primarily due to an increase of $410,959 in net proceeds from our agreement with Liberty Media and issuance of 11.25% Notes and SIRIUS 9.75% Notes during the nine months ended September 30, 2009 compared to proceeds from our Exchangeable Notes during the nine months ended September 30, 2008; a decrease in debt payment of $120,249, principally to holders of our 2½% Convertible Notes due 2009, Amended and Restated Credit Agreement and our agreement with Liberty Media during the nine months ended September 30, 2009 compared to debt payment to holders of the XM 9.75% Notes, XM Floating Rate Notes and XM's Debt of Consolidated Variable Interest Entity during the nine months ended September 30, 2008; and a decrease of $61,880 in payments to a minority interest holder.

Financings and Capital Requirements

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

Future Liquidity and Capital Resource Requirements

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

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

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

Off-Balance Sheet Arrangements

We are required under the terms of certain agreements to provide letters of credit and deposit monies in escrow, which place restrictions on our cash and cash equivalents. As of September 30, 2009 and December 31, 2008, $3,400 and $141,250, respectively, was classified as restricted investments as a result of obligations under these letters of credit and escrow deposits. In February 2009, we released to programming providers an aggregate of $138,000 held in escrow in satisfaction of future obligations under our agreements with them.

We do not have any significant off-balance sheet arrangements other than those disclosed in Note 15 to our unaudited consolidated financial statements in Item 1 of this Form 10-Q that are reasonably likely to have a material effect on our financial condition, results of operations, liquidity, capital expenditures or capital resources.

2009 Long-Term Stock Incentive Plan

In May 2009, our stockholders approved the Sirius XM Radio Inc. 2009 Long-Term Stock Incentive Plan (the "2009 Plan"). Employees, consultants and members of our board of directors are eligible to receive awards under the 2009 Plan, which provides for the grant of stock options, restricted stock, restricted stock units and other stock-based awards that the compensation committee of our board of directors may deem appropriate. Vesting and other terms of stock-based awards are set forth in the agreements with the individuals receiving the awards. Stock-based awards granted under the 2009 Plan are generally subject to a vesting requirement. Stock-based awards generally expire ten years from the date of grant. Each restricted stock unit entitles the holder to receive one share of common stock upon vesting. As of September 30, 2009, approximately 359,762,000 shares of common stock were available for future grant under the 2009 Plan.

Other Plans

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

Contractual Cash Commitments

For a discussion of our "Contractual Cash Commitments" refer to Note 15 to our unaudited consolidated financial statements in Item 1 of this Form 10-Q.

Related Party Transactions

For a discussion of "Related Party Transactions" refer to Note 9 to our unaudited consolidated financial statements in Item 1 of this Form 10-Q.

Critical Accounting Policies and Estimates

For a discussion of our "Critical Accounting Policies and Estimates" 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, 2008 and Note 3 to our unaudited consolidated financial statements in Item 1 of this Form 10-Q.

Footnotes to Results of Operations

(1) Average self-pay monthly churn represents the monthly average of self-pay deactivations by the quarter divided by the average self-pay subscriber balance for the quarter.

(2) We measure the percentage of subscribers that receive our service and convert to self-paying after the initial promotion period. We refer to this as the "conversion rate." At the time of sale, vehicle owners generally receive between three and twelve month prepaid trial subscriptions and we receive a subscription fee from the OEM. Promotional periods generally include the period of trial service plus 30 days to handle the receipt and processing of payments. We measure conversion rate three months after the period in which the trial service ends. Based on our experience it may take up to 90 days after the trial service ends for subscribers to respond to our marketing communications and become self-paying subscribers.

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

	Unaudited Pro Forma			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Subscriber revenue	$ 587,442	$ 572,355	$ 1,740,477	$ 1,669,700
Net advertising revenue	12,418	17,867	37,287	54,156
Total subscriber and net advertising revenue	$ 599,860	$ 590,222	$ 1,777,764	$ 1,723,856
Daily weighted average number of subscribers	18,393,678	18,710,940	18,514,041	18,187,927
ARPU	$ 10.87	$ 10.51	$ 10.67	$ 10.53

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

	Unaudited Pro Forma			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Subscriber acquisition cost	$ 109,384	$ 132,477	$ 274,082	$ 444,410
Less: share-based payment expense granted to third parties and employees	—	—	—	(14)
Less/Add: margin from direct sales of radios and accessories	1,438	3,323	(3,355)	9,333
SAC, as adjusted	$ 110,822	$ 135,800	$ 270,727	$ 453,729
Gross subscriber additions	1,606,446	1,843,785	4,325,532	5,997,096
SAC, as adjusted, per gross subscriber addition	$ 69	$ 74	$ 63	$ 76

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

	Unaudited Pro Forma			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Customer service and billing expenses	$ 56,644	$ 59,786	$ 175,928	$ 180,270
Less: share-based payment expense	(849)	(929)	(2,411)	(3,111)
Customer service and billing expenses, as adjusted	$ 55,795	$ 58,857	$ 173,517	$ 177,159
Daily weighted average number of subscribers	18,393,678	18,710,940	18,514,041	18,187,927
Customer service and billing expenses, as adjusted, per average subscriber	$ 1.01	$ 1.05	$ 1.04	$ 1.08

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

	Unaudited Pro Forma			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net cash provided by (used in) operating activities	$ 116,248	$ (101,983)	$ 253,107	$ (468,078)
Additions to property and equipment	(89,524)	(32,403)	(217,335)	(133,548)
Merger related costs	—	1,796	—	(13,047)
Restricted and other investment activity	—	34,996	—	37,025
Free cash flow	$ 26,724	$ (97,594)	$ 35,772	$ (577,648)

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

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

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

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

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

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

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

	Unaudited Pro Forma			
	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands)	**2009**	**2008**	**2009**	**2008**
Reconciliation of Net loss to Adjusted income (loss) from operations:				
Net loss	$ (181,935)	$ (217,010)	$ (416,090)	$ (653,867)
Add back Net loss items excluded from Adjusted income (loss) from operations:				
Interest and investment income	(962)	(5,534)	(2,602)	(12,180)
Interest expense, net of amounts capitalized	81,707	70,153	254,677	164,380
Income tax expense	1,115	1,723	3,344	3,813
Loss on extinguishment of debt and facilities, net	138,053	—	263,767	—
Loss (gain) on investments	58	7,549	(457)	16,099
Other (income) expense	(1,246)	4,918	(2,505)	10,478
Income (loss) from operations	36,790	(138,201)	100,134	(471,277)
Restructuring, impairments and related costs	2,554	7,430	30,167	7,457
Depreciation and amortization	47,997	64,111	145,596	196,051
Share-based payment expense	18,799	29,809	71,301	99,673
Adjusted income (loss) from operations	$ 106,140	$ (36,851)	$ 347,198	$ (168,096)

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

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

	Unaudited For the Three Months Ended September 30, 2009			
	As Reported	Purchase Price Accounting Adjustments	Allocation of Share-based Payment Expense	Pro Forma
Revenue:				
Subscriber revenue, including effects of rebates	$ 578,304	$ 9,138	$ —	$ 587,442
Advertising revenue, net of agency fees	12,418	—	—	12,418
Equipment revenue	10,506	—	—	10,506
Other revenue	17,428	1,813	—	19,241
Total revenue	618,656	10,951	—	629,607
Operating expenses (excludes depreciation and amortization shown separately below) (1)				
Cost of services:				
Satellite and transmission	19,542	331	(1,197)	18,676
Programming and content	78,315	18,117	(3,202)	93,230
Revenue share and royalties	100,558	22,973	—	123,531
Customer service and billing	56,529	115	(849)	55,795
Cost of equipment	11,944	—	—	11,944
Sales and marketing	52,530	3,155	(2,858)	52,827
Subscriber acquisition costs	90,054	19,330	—	109,384
General and administrative	56,923	374	(8,816)	48,481
Engineering, design and development	11,252	224	(1,877)	9,599
Depreciation and amortization	72,100	(24,103)	—	47,997
Share-based payment expense	—	—	18,799	18,799
Restructuring, impairments and related costs	2,554	—	—	2,554
Total operating expenses	552,301	40,516	—	592,817
Income (loss) from operations	66,355	(29,565)	—	36,790
Other income (expense)				
Interest and investment income	962	—	—	962
Interest expense, net of amounts capitalized	(78,527)	(3,180)	—	(81,707)
Loss on extinguishment of debt and facilities, net	(138,053)	—	—	(138,053)
Loss on investments	(58)	—	—	(58)
Other income	1,246	—	—	1,246
Total other expense	(214,430)	(3,180)	—	(217,610)
Loss before income taxes	(148,075)	(32,745)	—	(180,820)
Income tax expense	(1,115)	—	—	(1,115)
Net loss	$ (149,190)	$ (32,745)	$ —	$ (181,935)

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

Satellite and transmission	$ 1,086	$ 111	$ —	$ 1,197
Programming and content	3,037	165	—	3,202
Customer service and billing	734	115	—	849
Sales and marketing	2,722	136	—	2,858
Subscriber acquisition costs	—	—	—	—
General and administrative	8,442	374	—	8,816
Engineering, design and development	1,653	224	—	1,877
Total share-based payment expense	$ 17,674	$ 1,125	$ —	$ 18,799

	Unaudited For the Three Months Ended September 30, 2008				
	As Reported	Predecessor Financial Information	Purchase Price Accounting Adjustments (a)	Allocation of Share-based Payment Expense	Pro Forma
Revenue:					
Subscriber revenue, including effects of rebates	$ 458,237	$ 95,684	$ 18,434	$ —	$ 572,355
Advertising revenue, net of agency fees	14,674	3,193	—	—	17,867
Equipment revenue	11,271	1,585	—	—	12,856
Other revenue	4,261	4,242	1,195	—	9,698
Total revenue	488,443	104,704	19,629	—	612,776
Operating expenses (excludes depreciation and amortization shown separately below) (1)					
Cost of services:					
Satellite and transmission	19,526	6,644	638	(1,672)	25,136
Programming and content	106,037	15,991	13,912	(4,310)	131,630
Revenue share and royalties	85,592	24,198	11,010	—	120,800
Customer service and billing	47,432	12,249	105	(929)	58,857
Cost of equipment	13,773	2,406	—	—	16,179
Sales and marketing	63,637	17,268	2,081	(4,808)	78,178
Subscriber acquisition costs	86,616	33,366	12,495	—	132,477
General and administrative	57,310	33,209	777	(15,315)	75,981
Engineering, design and development	10,434	2,611	119	(2,775)	10,389
Impairment of goodwill	4,750,859	—	(4,750,859)	—	—
Depreciation and amortization	66,774	10,828	(13,491)	—	64,111
Restructuring, impairments and related costs	7,430	—	—	—	7,430
Share-based payment expense	—	—	—	29,809	29,809
Total operating expenses	5,315,420	158,770	(4,723,213)	—	750,977
Loss from operations	(4,826,977)	(54,066)	4,742,842	—	(138,201)
Other income (expense)					
Interest and investment income	4,940	594	—	—	5,534
Interest expense, net of amounts capitalized	(49,216)	(14,130)	(6,807)	—	(70,153)
Loss on extinguishment of debt and facilities, net	—	—	—	—	—
Loss on investments	(3,089)	(4,460)	—	—	(7,549)
Other expense	(3,870)	(1,048)	—	—	(4,918)
Total other expense	(51,235)	(19,044)	(6,807)	—	(77,086)
Loss before income taxes	(4,878,212)	(73,110)	4,736,035	—	(215,287)
Income tax expense	(1,215)	(508)	—	—	(1,723)
Net loss	$ (4,879,427)	$ (73,618)	$ 4,736,035	$ —	$ (217,010)

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

Satellite and transmission	$ 1,331	$ 305	$ 36	$ —	$ 1,672
Programming and content	3,529	586	195	—	4,310
Customer service and billing	596	228	105	—	929
Sales and marketing	3,672	770	366	—	4,808
Subscriber acquisition costs	—	—	—	—	—
General and administrative	12,904	1,634	777	—	15,315
Engineering, design and development	1,973	510	292	—	2,775
Total share-based payment expense	$ 24,005	$ 4,033	$ 1,771	$ —	$ 29,809

(a) Includes impairment of goodwill.

	Unaudited For the Nine Months Ended September 30, 2009			
	As Reported	Purchase Price Accounting Adjustments	Allocation of Share-based Payment Expense	Pro Forma
Revenue:				
Subscriber revenue, including effects of rebates	$ 1,699,455	$ 41,022	$ —	$ 1,740,477
Advertising revenue, net of agency fees	37,287	—	—	37,287
Equipment revenue	31,343	—	—	31,343
Other revenue	28,379	5,438	—	33,817
Total revenue	1,796,464	46,460	—	1,842,924
Operating expenses (excludes depreciation and amortization shown separately below) (1)				
Cost of services:				
Satellite and transmission	59,435	1,013	(3,371)	57,077
Programming and content	230,825	54,708	(7,919)	277,614
Revenue share and royalties	296,855	65,608	—	362,463
Customer service and billing	175,570	358	(2,411)	173,517
Cost of equipment	27,988	—	—	27,988
Sales and marketing	152,647	9,986	(10,594)	152,039
Subscriber acquisition costs	230,773	43,309	—	274,082
General and administrative	182,953	1,252	(41,393)	142,812
Engineering, design and development	32,975	772	(5,613)	28,134
Depreciation and amortization	231,624	(86,028)	—	145,596
Share-based payment expense	—	—	71,301	71,301
Restructuring, impairments and related costs	30,167	—	—	30,167
Total operating expenses	1,651,812	90,978	—	1,742,790
Income (loss) from operations	144,652	(44,518)	—	100,134
Other income (expense)				
Interest and investment income	2,602	—	—	2,602
Interest expense, net of amounts capitalized	(240,062)	(14,615)	—	(254,677)
Loss on extinguishment of debt and facilities, net	(263,767)	—	—	(263,767)
Gain on investments	457	—	—	457
Other income	2,505	—	—	2,505
Total other expense	(498,265)	(14,615)	—	(512,880)
Loss before income taxes	(353,613)	(59,133)	—	(412,746)
Income tax expense	(3,344)	—	—	(3,344)
Net loss	$ (356,957)	$ (59,133)	$ —	$ (416,090)

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

Satellite and transmission	$ 3,020	$ 351	$ —	$ 3,371
Programming and content	7,418	501	—	7,919
Customer service and billing	2,052	359	—	2,411
Sales and marketing	10,081	513	—	10,594
Subscriber acquisition costs	—	—	—	—
General and administrative	40,141	1,252	—	41,393
Engineering, design and development	4,841	772	—	5,613
Total share-based payment expense	$ 67,553	$ 3,748	$ —	$ 71,301

	Unaudited For the Nine Months Ended September 30, 2008				
	As Reported	Predecessor Financial Information	Purchase Price Accounting Adjustments (a)	Allocation of Share-based Payment Expense	Pro Forma
Revenue:					
Subscriber revenue, including effects of rebates	$ 980,396	$ 670,870	$ 18,434	$ —	$ 1,669,700
Advertising revenue, net of agency fees	31,413	22,743	—	—	54,156
Equipment revenue	25,290	13,397	—	—	38,687
Other revenue	4,710	24,184	1,195	—	30,089
Total revenue	1,041,809	731,194	19,629	—	1,792,632
Operating expenses (excludes depreciation and amortization shown separately below) (1)					
Cost of services:					
Satellite and transmission	34,800	46,566	638	(5,668)	76,336
Programming and content	222,975	117,156	13,912	(12,621)	341,422
Revenue share and royalties	177,635	166,606	11,010	—	355,251
Customer service and billing	97,218	82,947	105	(3,111)	177,159
Cost of equipment	28,007	20,013	—	—	48,020
Sales and marketing	151,237	126,054	2,081	(18,789)	260,583
Subscriber acquisition costs	257,832	174,083	12,495	(14)	444,396
General and administrative	148,555	116,444	777	(50,336)	215,440
Engineering, design and development	28,091	23,045	119	(9,134)	42,121
Impairment of goodwill	4,750,859	—	(4,750,859)	—	—
Depreciation and amortization	120,793	88,749	(13,491)	—	196,051
Restructuring, impairments and related costs	7,457	—	—	—	7,457
Share-based payment expense	—	—	—	99,673	99,673
Total operating expenses	6,025,459	961,663	(4,723,213)	—	2,263,909
Loss from operations	(4,983,650)	(230,469)	4,742,842	—	(471,277)
Other income (expense)					
Interest and investment income	9,167	3,013	—	—	12,180
Interest expense, net of amounts capitalized	(83,636)	(73,937)	(6,807)	—	(164,380)
Loss on extinguishment of debt and facilities, net	—	—	—	—	—
Loss on investments	(3,089)	(13,010)	—	—	(16,099)
Other expense	(3,935)	(6,543)	—	—	(10,478)
Total other expense	(81,493)	(90,477)	(6,807)	—	(178,777)
Loss before income taxes	(5,065,143)	(320,946)	4,736,035	—	(650,054)
Income tax expense	(2,301)	(1,512)	—	—	(3,813)
Net loss	$ (5,067,444)	$ (322,458)	$ 4,736,035	$ —	$ (653,867)

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

Satellite and transmission	$ 2,887	$ 2,745	$ 36	$ —	$ 5,668
Programming and content	7,477	4,949	195	—	12,621
Customer service and billing	1,137	1,869	105	—	3,111
Sales and marketing	11,376	7,047	366	—	18,789
Subscriber acquisition costs	14	—	—	—	14
General and administrative	36,359	13,200	777	—	50,336
Engineering, design and development	4,167	4,675	292	—	9,134
Total share-based payment expense	$ 63,417	$ 34,485	$ 1,771	$ —	$ 99,673

(a) Includes impairment of goodwill.

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

	Unaudited Actual			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Subscriber revenue	$ 578,304	$ 458,237	$ 1,699,455	$ 980,396
Net advertising revenue	12,418	14,674	37,287	31,413
Total subscriber and net advertising revenue	$ 590,722	$ 472,911	$ 1,736,742	$ 1,011,809
Daily weighted average number of subscribers	18,393,678	15,472,506	18,514,041	10,887,028
ARPU	$ 10.71	$ 10.19	$ 10.42	$ 10.33

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

	Unaudited Actual			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Subscriber acquisition cost	$ 90,054	$ 86,616	$ 230,773	$ 257,832
Less: share-based payment expense granted to third parties and employees	—	—	—	(14)
Less/Add: margin from direct sales of radios and accessories	1,438	2,502	(3,355)	2,717
SAC, as adjusted	$ 91,492	$ 89,118	$ 227,418	$ 260,535
Gross subscriber additions	1,606,446	1,495,790	4,325,532	3,528,499
SAC, as adjusted, per gross subscriber addition	$ 57	$ 60	$ 53	$ 74

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

	Unaudited Actual			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Customer service and billing expenses	$ 56,529	$ 47,432	$ 175,570	$ 97,218
Less: share-based payment expense	(734)	(596)	(2,052)	(1,137)
Customer service and billing expenses, as adjusted	$ 55,795	$ 46,836	$ 173,518	$ 96,081
Daily weighted average number of subscribers	18,393,678	15,472,506	18,514,041	10,887,028
Customer service and billing expenses, as adjusted, per average subscriber	$ 1.01	$ 1.01	$ 1.04	$ 0.98

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

	Unaudited Actual			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net cash provided by (used in) operating activities	$ 116,248	$ (85,911)	$ 253,107	$ (216,992)
Additions to property and equipment	(89,524)	(29,007)	(217,335)	(102,705)
Merger related costs	—	1,796	—	(13,047)
Restricted and other investment activity	—	60,400	—	62,400
Free cash flow	$ 26,724	$ (52,722)	$ 35,772	$ (270,344)

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

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

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

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

	Unaudited Actual			
	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands)	2009	2008	2009	2008
Reconciliation of Net loss to Adjusted income (loss) from operations:				
Net loss	$ (149,190)	$ (4,879,427)	$ (356,957)	$ (5,067,444)
Add back Net loss items excluded from Adjusted income (loss) from operations:				
Interest and investment income	(962)	(4,940)	(2,602)	(9,167)
Interest expense, net of amounts capitalized	78,527	49,216	240,062	83,636
Income tax expense	1,115	1,215	3,344	2,301
Loss on extinguishment of debt and facilities, net	138,053	—	263,767	—
Loss (gain) on investments	58	3,089	(457)	3,089
Other (income) expense	(1,246)	3,870	(2,505)	3,935
Income (loss) from operations	66,355	(4,826,977)	144,652	(4,983,650)
Restructuring, impairments and related costs	2,554	7,430	30,167	7,457
Impairment of goodwill	—	4,750,859	—	4,750,859
Depreciation and amortization	72,100	66,774	231,624	120,793
Share-based payment expense	17,674	24,005	67,553	63,417
Adjusted income (loss) from operations	$ 158,683	$ 22,091	$ 473,996	$ (41,124)

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISKS

As of September 30, 2009, we did not have any derivative financial instruments. We do not hold or issue any free-standing derivatives. We hold investments in marketable securities, which consist of auction rate certificates and a debt security. We classify our marketable securities as available-for-sale. We hold an investment in auction rate certificates which are classified as available-for-sale. These securities are consistent with the investment objectives contained within our investment policy. The basic objectives of our investment policy are the preservation of capital, maintaining sufficient liquidity to meet operating requirements and maximizing yield.

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

ITEM 4. CONTROLS AND PROCEDURES

Controls and Procedures

As of September 30, 2009, an evaluation was performed under the supervision and with the participation of our management, including Mel Karmazin, our Chief Executive Officer, and David J. Frear, our Executive Vice President and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on that evaluation, our management, including our Chief Executive Officer and our Chief Financial Officer, concluded that our disclosure controls and procedures were effective as of September 30, 2009. There has been no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting during the three months ended September 30, 2009.

PART II — OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

FCC Merger Order. On July 25, 2008, the FCC adopted an order approving the Merger. The order became effective immediately upon adoption. Inc September 2008, Mt. Wilson FM Broadcasters, Inc. filed a Petition for Reconsideration of this order. This Petition for Reconsideration remains pending.

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

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

Other Matters. In the ordinary course of business, we are a defendant in various lawsuits and arbitration proceedings, including actions filed by former employees, parties to contracts or leases and owners of patents, trademarks, copyrights or other intellectual property. None of these actions are, in our opinion, likely to have a material adverse effect on our cash flows, financial position or results of operations.

ITEM 1A. RISK FACTORS

Except as disclosed in our Quarterly Report on Form 10-Q for the three months ended March 31, 2009, there have been no material changes to the risk factors previously disclosed in response to Part 1, Item 1A, of our Annual Report on Form 10-K for the year ended December 31, 2008.

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

Not applicable.

ITEM 5. OTHER INFORMATION

Resignation of Jeffrey D. Zients. On June 22, 2009, Jeffrey D. Zients resigned from our board of directors. Mr. Zients was confirmed by the United States Senate as Deputy Director for Management, Office of Management and Budget, of the United States and was required to resign as a director.

Due to the resignation of Mr. Zients, we no longer comply with NASDAQ's independent director requirement for continued listing as set forth in the NASDAQ Listing Rules. We currently have fourteen directors, seven of whom our board has determined to be an "independent director" as such term is defined under the NASDAQ Listing Rules.

In accordance with the NASDAQ Listing Rules, we will comply with the independent director requirement prior to the earlier of our next annual stockholders' meeting or June 22, 2010.

Directors Compensation. As previously disclosed in our annual proxy statement, each non-employee member of our board of directors is entitled to receive annually a $50,000 cash retainer and an option to purchase our common stock with a grant date fair value equal to $70,000. The number of shares underlying the option is determined using a Black-Scholes pricing model using the same assumptions we then employ in calculating option expense in our consolidated financial statements. The option is granted following each year's annual meeting of stockholders. Our 2009 annual meeting of stockholders was held on May 27, 2009.

On May 27, 2009 (the "Grant Date"), we granted each non-employee member of our board of directors an option to purchase 214,237 shares of our common stock at an exercise price of $0.35 per share, the closing price of our common stock that day on the Nasdaq Global Select Market (the "Original Option Award"). In calculating the number of shares, we used a Black Scholes pricing model that overstated the fair market value of the options, which resulted in us awarding insufficient number of shares per director.

Accordingly, on August 5, 2009, we awarded each non-employee member of our board of directors an additional option to purchase 53,973 shares of our common stock at an exercise price of $0.54 per share, the closing price of our common stock that day on the Nasdaq Global Select Market (the "Additional Option Award"). The Additional Option Award is subject to the same terms and conditions as the Original Option Award, including the vesting schedule.

The aggregate Black-Scholes value, as of the respective option grant dates, of the Original Option Award and the Additional Option Award is $70,000 for each non-employee director. Mr. Huber and Mr. Mendel have elected to forgo all compensation paid to directors and did not participate in these stock option awards.

ITEM 6. EXHIBITS

See Exhibits 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 XM Radio Inc.

By: /s/ David J. Frear

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

November 5, 2009

Exhibit 4.61

Execution Copy

SIRIUS XM RADIO INC.

9.75% Senior Secured Notes due 2015

INDENTURE

Dated as of August 24, 2009

U.S. BANK NATIONAL ASSOCIATION

Trustee

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INDENTURE dated as of August 24, 2009 between SIRIUS XM RADIO INC., a Delaware corporation (the "*Company*") and U.S. BANK NATIONAL ASSOCIATION, as trustee (the "*Trustee*").

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of 9.75% Senior Secured Notes due 2015 (the "*Notes*"):

ARTICLE 1

Definitions and Incorporation by Reference

SECTION 1.01. Definitions.

"*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 Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or another Restricted Subsidiary; or

(3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary;

provided, however, that any such Restricted Subsidiary described in clause (2) or (3) above is primarily engaged in a Related Business.

"*Additional Notes*" means Notes under this Indenture after the Issue Date and in compliance with Sections 2.13 and 4.03, it being understood that any Notes issued in exchange for or replacement of any Note issued on the Issue Date shall not be an Additional Note.

"*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. For purposes of Sections 4.04, 4.06 and 4.07 only, "Affiliate" shall also mean any beneficial owner of Capital Stock representing 10% or more of the total voting power of the Voting Stock (on a fully diluted basis) of the Company (excluding any Person permitted to report such ownership on Schedule 13G under the Exchange Act) or of rights or warrants to purchase such Capital Stock (whether or not currently exercisable) and any Person who would be an Affiliate of any such beneficial owner pursuant to the first sentence hereof.

"*Asset Disposition*" means (A) an Event of Loss or (B) any sale, lease (other than an operating lease entered into in the ordinary course of business), transfer or other disposition (or series of related sales, leases, transfers or dispositions) by the Company or any Restricted

Subsidiary, 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 Restricted Subsidiary (other than directors' qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary);

(2) all or substantially all the assets of any division or line of business of the Company or any Restricted Subsidiary; or

(3) any other assets of the Company or any Restricted Subsidiary outside of the ordinary course of business of the Company or such Restricted Subsidiary,

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

(A) a disposition by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary;

(B) for purposes of Section 4.06 only, (i) 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 4.04; (ii) the making of an Asset Swap and (iii) a disposition of all or substantially all the assets of the Company in accordance with Section 5.01;

(C) a disposition of assets with a fair market value of less than $10 million;

(D) a disposition of cash or Temporary Cash Investments;

(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 Company's continuing use of such intellectual property or other general intangibles and licenses, leases or subleases of other property;

(G) the sale or lease of equipment, inventory, accounts receivable or other assets in the ordinary course of business;

(H) any issuance or sale of Capital Stock of an Unrestricted Subsidiary;

(I) foreclosure on assets;

(J) disposition of damaged, obsolete or worn-out property in the ordinary course of business;

(K) any disposition of SIRIUS Canada Inc. in connection with a merger, consolidation, joint venture or other combination with Canadian Satellite Radio Holdings Inc.; and

(L) a Company-XM Merger or a Company-XM Holdings Merger.

"*Asset Swap*" means concurrent purchase and sale or exchange of Related Business Assets between the Company or any of its Restricted Subsidiaries and another Person; *provided* that any cash received is applied in accordance with Section 4.06.

"*Attributable Debt*" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate borne by the Notes, 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 of Directors*" means the Board of Directors of the Company or any committee thereof duly authorized to act on behalf of such Board.

"*Business Day*" means each day which is not a Legal Holiday.

"*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 4.11, 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.

"*Change of Control*" means the occurrence of any of the following:

(1) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, 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 Company (for the purposes of this clause (1), such other person shall be deemed to beneficially own any Voting Stock of a Person held by any other Person (the "*parent entity*"), if such other person is the beneficial owner (as defined above in this clause (1)), directly or indirectly, of more than 50% of the voting power of the Voting Stock of such parent entity);

(2) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors;

(3) the adoption of a plan relating to the liquidation or dissolution of the Company;

(4) the merger or consolidation of the Company with or into another Person or the merger of another Person with or into the Company other than a transaction following which holders of securities that represented 100% of the Voting Stock of the Company 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; or

(5) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act);

Notwithstanding the foregoing, the consummation of neither a Company-XM Holdings Merger nor a Company-XM Merger will constitute a Change of Control under this Indenture.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Collateral*" means (a) at any time prior to the Company-XM Merger Date, the Collateral (as defined in the Sirius Collateral Agreement) and any other property or assets of the Company or any Guarantor which is subject to a Lien granted under any Security Document, as such Collateral may be supplemented or otherwise modified in accordance with the terms hereof or of the Sirius Collateral Agreement, and (b) on and after the Company-XM Merger Date, the Collateral (as defined in the XM Security Documents as in effect at such time) and any other

property or assets of the Company or any Guarantor which is subject to a Lien granted under any Security Document.

"*Collateral Agent*" means U.S. Bank National Association until a successor replaces it and, thereafter, means the successor.

"*Collateral Agreement*" means (a) prior to the Company-XM Merger Date, the Sirius Collateral Agreement, and (b) on or after the Company-XM Merger Date, the XM Security Agreement as in effect at such time.

"*Company*" means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

"*Company-XM Merger*" means (a) a merger or consolidation of the Company with or into XM Satellite Radio Inc. or a merger or consolidation of XM Satellite Radio Inc. with or into the Company or (b) any assignment, transfer, conveyance or other disposition of all or substantially all of the properties or assets of the Company to XM Satellite Radio Inc. or of XM Satellite Radio Inc. to the Company.

"*Company-XM Holdings Merger*" means (a) a merger or consolidation of the Company with or into XM Holdings or a merger or consolidation of XM Holdings with or into the Company or (b) any assignment, transfer, conveyance or other disposition of all or substantially all of the properties or assets of XM Holdings to the Company or of the Company to XM Holdings.

"*Company-XM Merger Date*" means the date on which either a Company-XM Merger or Company-XM Holdings Merger is consummated.

"*Consolidated Income Tax Expense*" means, with respect to the Company for any period, the provision for federal, state, local and foreign taxes based on income or profits (including franchise taxes) payable by the Company and its Restricted Subsidiaries 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 Company and its Restricted Subsidiaries 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 Company and its Restricted Subsidiaries 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 Company or any Restricted Subsidiary 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 Company or such Restricted Subsidiary had not earned the interest income, if any, actually earned during the Reference Period in respect of cash or Temporary Cash Investments used to repay, repurchase, defease or otherwise discharge such Indebtedness;

(3) if since the beginning of the Reference Period the Company or any Restricted Subsidiary 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 Company or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) 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 Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary 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 Company or a Restricted Subsidiary 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 Company. 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 Company 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 Company) if such Person is not a Restricted Subsidiary, except that:

(A) subject to the exclusion contained in clauses (3), (4) and (5) below, the Company'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 Company or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Restricted Subsidiary, to the limitations contained in clause (2) below); and

(B) the Company'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 Company or a Restricted Subsidiary;

(2) any net income of any Restricted Subsidiary if such Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company, except that:

(A) subject to the exclusion contained in clauses (3), (4) and (5) below, the Company's equity in the net income of any such Restricted Subsidiary 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 Restricted Subsidiary during such period to the Company or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Restricted Subsidiary, to the limitation contained in this clause); and

(B) the Company's equity in a net loss of any such Restricted Subsidiary 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 Company 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 4.04 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 Company or a Restricted Subsidiary to the extent such repurchases, repayments, redemptions, proceeds or returns increase the amount of Restricted Payments permitted under such Section pursuant to Section 4.04(a)(3)(D).

"*Consolidated Operating Cash Flow*" means, with respect to the Company and its Restricted Subsidiaries 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

(3) 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 Company and the Restricted Subsidiaries (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 Company and its consolidated Restricted Subsidiaries, as shown on the most recent balance sheet of the Company, determined on a consolidated basis in accordance with GAAP.

"*Continuing Directors*" means, as of any date of determination, any member of the Board of Directors who:

(1) was a member of such Board of Directors on the Issue Date; or

(2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such board at the time of such nomination or election.

"*Corporate Trust Office*" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 100 Wall Street, Suite 1600, New York, New York 10005, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

"*Default*" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"*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 Stated Maturity of the Notes*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 Notes in Sections 4.06 and 4.10; and

(B) any such requirement only becomes operative after compliance with such terms applicable to the Notes, including the purchase of any Notes tendered pursuant thereto.

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 Indenture; *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.

"*Equity Offering*" means a primary public or private offering of Capital Stock of the Company pursuant to an effective registration statement under the Securities Act, an offering memorandum, private placement memorandum or otherwise, other than offerings with respect to the Common Stock, or options, warrants or rights of the Company, registered on Form S-4 or S-8.

"*Event of Loss*" means, with respect to any property or asset (tangible or intangible, real or personal) constituting Collateral, any of the following:

(1) any loss, destruction or damage of such property or asset;

(2) any actual condemnation, expropriations, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset; or

(3) any settlement in lieu of clause (2) above;

provided, however, that none of the foregoing apply to any Collateral consisting of satellites and property appurtenant thereto.

"*Exchange Act*" means the U.S. Securities Exchange Act of 1934, as amended.

"*Excluded Collateral*" has the meaning given to the terms "Excluded Assets" (a) in the Sirius Collateral Agreement prior to the Company-XM Merger Date, and (b) in the XM Security Documents on and after the Company-XM Merger Date.

"*Existing Credit Agreement*" means that certain Term Credit Agreement dated as of June 20, 2007 among MSSFI, the Company and certain subsidiaries of the Company party thereto, without giving effect to any amendments, restatements or other modifications thereof.

"*FCC License Subsidiary*" means Satellite CD Radio, Inc., the wholly owned subsidiary of the Company that owns certain of the Company's FCC Licenses to provide satellite digital radio service in the United States.

"*First Lien Indebtedness*" means (a) obligations under the Notes, this Indenture and the Note Guarantees, in each case, issued on the Issue Date, (b) the Indebtedness in respect of the Existing Credit Agreement, (c) after the Company-XM Merger Date, Indebtedness of the

Company in respect of the XM Secured Notes in an aggregate principal amount not in excess of $525.75 million incurred in connection with the Company-XM Merger or Company-XM Holdings Merger pursuant to Section 4.03(b)(13) and (d) Refinancing Indebtedness in respect of First Lien Indebtedness set forth in clauses (a), (b) and (c) of this definition; *provided*, *however*, that the obligors and the holders (or their designated agent) in respect of such Indebtedness under clauses (b) and (d) of this definition accede, execute or otherwise become bound by the terms of the applicable Intercreditor Agreement and the applicable Security Documents, in each case, in a manner reasonably acceptable to the Trustee and the Collateral Agent.

"*First Lien Leverage Ratio*" as of any date of determination means the ratio of (x) the aggregate amount of First Lien Indebtedness of the Company and its Restricted Subsidiaries 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; *provided, however*, that:

(1) if the transaction giving rise to the need to calculate the First Lien 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 Company or any Restricted Subsidiary 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 First Lien 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 Company or such Restricted Subsidiary had not earned the interest income, if any, actually earned during the Reference Period in respect of cash or Temporary Cash Investments used to repay, repurchase, defease or otherwise discharge such Indebtedness;

(3) if since the beginning of the Reference Period the Company or any Restricted Subsidiary 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 Company or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) 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 Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary 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 Company or a Restricted Subsidiary 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 Company. 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.

"*Foreign Subsidiary*" means any Subsidiary that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"*GAAP*" means generally accepted accounting principles in the United States of America as in effect as of the Issue Date, including those set forth in:

(1) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants;

(2) statements and pronouncements of the Financial Accounting Standards Board;

(3) such other statements by such other entity as approved by a significant segment of the accounting profession; and

(4) the rules and regulations of the SEC governing the inclusion of financial statements (including*pro forma* financial statements) in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

"*Guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(2) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"*Guarantor*" means each Subsidiary Guarantor.

"*Hedging Obligations*" of any Person means the obligations of such Person under:

(1) currency exchange or interest rate swap agreements, currency exchange or interest rate cap agreements or currency exchange or interest rate collar agreements; or

(2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange or interest rate prices.

"*Holder*" or "*Noteholder*" means the Person in whose name a Note is registered on the Registrar's books.

"*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 Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Restricted Subsidiary. The term "Incurrence" when used as a noun shall have a correlative meaning. Solely for purposes of determining compliance with Section 4.03:

(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 or bankers' acceptance (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;

(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 Restricted Subsidiary of such Person, the principal amount attributable to such Preferred Stock to be determined in accordance with this Indenture (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 Company or any Restricted Subsidiary 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 Company's or any Restricted Subsidiary's obligations in respect of ordinary course trade payables pursuant to any programming, content acquisition, automotive, retail distribution, satellite or chip set 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.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

"*Independent Qualified Party*" means an investment banking firm, accounting firm, appraisal firm, economic consulting firm or management consulting firm, each of national standing; *provided, however,* that such firm is not an Affiliate of the Company.

"*Intercreditor Agreement*" means, prior to the Company-XM Merger Date, but on or after the Term Loan Refinancing Date, the Refinancing Intercreditor Agreement and, on or after the Company-XM Merger Date, the XM Intercreditor Agreement as in effect at such time.

"*Intercreditor Date*" means the earlier of (a) the Term Loan Refinancing Date or (b) the Company-XM Merger 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.

"*interest*" means any interest payable on the Notes including Reporting Additional Interest.

"*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 Company or any Restricted Subsidiary issues, sells or otherwise disposes of

any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any Investment by the Company or any Restricted Subsidiary 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 Indenture;

(2) endorsements of negotiable instruments and documents in the ordinary course of business;

(3) an acquisition of assets by the Company or a Subsidiary for consideration to the extent such consideration consists of Capital Stock of the Company; and

(4) advances, deposits, escrows or similar arrangements entered into in the ordinary course of business in respect of retail or automotive distribution arrangements, satellite, chip set, programming or content acquisitions or extensions.

For purposes of the definition of "Unrestricted Subsidiary", the definition of "Restricted Payment" and Section 4.04, "Investment" shall include:

(1) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets of any Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary equal to an amount (if positive) equal to (A) the Company's "Investment" in such Subsidiary at the time of such redesignation less (B) the portion (proportionate to the Company'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

(2) 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 24, 2009.

"*Junior Lien*" means any Lien that is subject and subordinate to all Liens securing First Lien Indebtedness.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions are not required to be open in the State of New York.

"*Lien*" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"Loral Credit Agreement" means the Customer Credit Agreement dated as of May 31, 2006, between the Borrower and Space Systems/Loral, Inc., as amended to date.

"Material Subsidiary" means, on any date of determination, (a) each FCC License Subsidiary, (b) each other Restricted Subsidiary, other than domestic Restricted Subsidiaries that do not represent more than 5% for any such Subsidiary individually, or more than 10% in the aggregate for all such Subsidiaries, of either (i) Consolidated Total Assets or (ii) consolidated total revenues of the Company as of the end of, or for the period of, four fiscal quarters most recently ended for which financial statements are available and (c) any domestic Restricted Subsidiary (including the FCC License Subsidiary but only to the extent permitted under applicable law) that has Guaranteed any Indebtedness or other obligation of the Company or any Restricted Subsidiary in excess of $2.0 million.

"*Moody's*" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"*MSSFI*" means Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent under the Existing Credit Agreement.

"*Net Available Cash*" means (A) from an Asset Disposition that constitutes an Event of Loss, the aggregate cash proceeds received by the Company in respect of any Event of Loss, including, without limitation, insurance proceeds, condemnation awards or damages awarded by any judgment, net of the direct cost in recovery of such proceeds (including, without limitation, legal, accounting, appraisal and insurance adjuster fees and any relocation expenses incurred as a result thereof), amounts required to be applied to the repayment of Indebtedness secured by any Permitted Lien on the asset or assets that were the subject of such Event of Loss, and any taxes paid or payable as a result thereof and (B) from any other 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 Restricted Subsidiaries 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 Company or any Restricted Subsidiary 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 Company or any Restricted Subsidiary.

"*Net Cash Proceeds*", with respect to any issuance or sale of Capital Stock or Indebtedness, means 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.

"*Note Guarantees*" means the Guarantees of the Subsidiary Guarantors pursuant to the terms of this Indenture, and "Note Guarantee" means any of them.

"*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.

"*Offering Memorandum*" means the offering memorandum of the Company dated August 13, 2009 pursuant to which the Notes were offered to the Holders.

"*Officer*" means the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer or the Secretary of the Company.

"*Officers' Certificate*" means a certificate signed by two Officers.

"*Opinion of Counsel*" means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

"*Permitted Holder*" means Affiliates of Sirius XM Radio Inc.

"*Permitted Investment*" means an Investment by the Company or any Restricted Subsidiary in:

(1) the Company, a Restricted Subsidiary or a Person that will, upon the making of such Investment, become a Restricted Subsidiary; *provided, however*, that the primary business of such Restricted Subsidiary 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 Company or a Restricted Subsidiary; *provided, however*, that such Person's primary business is a Related Business;

(3) cash and Temporary Cash Investments;

(4) receivables owing to the Company or any Restricted Subsidiary 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 Company or any such Restricted Subsidiary 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 Company or such Restricted Subsidiary not to exceed $2.0 million at any time outstanding;

(7) stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Company or any Restricted Subsidiary 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 4.06 or (B) a disposition of assets not constituting an Asset Disposition;

(9) any Person where such Investment was acquired by the Company or any of its Restricted Subsidiaries (A) in exchange for any other Investment or accounts receivable held by the Company or any such Restricted Subsidiary 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 Company or any of its Restricted Subsidiaries 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 Company or any Restricted Subsidiary;

(11) any Person to the extent such Investments consist of Hedging Obligations otherwise permitted under Section 4.03;

(12) any Person to the extent such Investment exists 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 and (y) 10% of Tangible Assets (as determined based on the consolidated balance sheet of the Company as of the end of the most recent fiscal quarter for which internal financial statements are available prior to such Investment), in each case 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) any Investment that becomes an Investment of the Company as a result of a Company-XM Holdings Merger or a Company-XM Merger;

(15) any Asset Swap made in accordance with Section 4.06; and

(16) any merger, consolidation, joint venture or other combination between Canadian Satellite Radio Holdings Inc. and SIRIUS Canada Inc. that would otherwise constitute an Investment of the Company.

"*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 Company in excess of those set forth by regulations promulgated by the Federal Reserve Board and (B) such deposit account is not intended by the Company or any Restricted Subsidiary 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 its Restricted Subsidiaries 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 on property of the Company or its Subsidiaries existing on the Issue Date;

(8) Liens (other than Liens incurred as a result of a Company-XM Holdings Merger or a Company-XM Merger) on property or shares of Capital Stock of another Person at the time such other Person becomes a Restricted Subsidiary of such Person; *provided, however,* that the Liens may not extend to any other property owned by such Person or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto);

(9) Liens (other than Liens incurred as a result of a Company-XM Holdings Merger or a Company-XM Merger) on property at the time such Person or any of its Restricted Subsidiaries 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 its Restricted Subsidiaries (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 Indenture;

(12) Junior Liens to secure Indebtedness permitted under Section 4.03(a) and Section 4.03(b)(1);*provided* that such Junior Liens shall only be permitted to the extent the holders of such Indebtedness enter into an intercreditor agreement on customary terms reasonably acceptable to the Collateral Agent;

(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 Company or any of its Restricted Subsidiaries;

(14) Liens arising from Uniform Commercial Code financing statement filing regarding operating leases entered into by the Company and its Restricted Subsidiaries 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, satellite, chipset, programming and content acquisitions and extensions;

(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 clauses (6), (7), (8), (9) and (20); *provided, however*, that in the case of Liens to secure any Refinancing (or successive Refinancings) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clauses (6), (7), (8) and (9):

(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;

(17) any interest or title of a lessor under any Capital Lease Obligation;

(18) any Lien (other than Liens securing Indebtedness) that becomes a Lien of the Company as a result of a Company-XM Holdings Merger or Company-XM Merger; *provided, however*, that (A) the Liens may not extend to any other property owned by such Person or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto), (B) the Liens must have existed prior to such transaction and shall not be Incurred as a result of such transaction and (C) the priority of such Lien may not be improved as a result of such transaction;

(19) Liens relating to Replacement Satellite Vendor Indebtedness, including Refinancing Indebtedness in respect thereof covering only the assets acquired, constructed or improved with such Indebtedness;

(20) Liens securing First Lien Indebtedness, including the Notes and Note Guarantees issued on the Issue Date;

(21) Liens incurred in the ordinary course of business of the Company or any Restricted Subsidiary with respect to obligations that do not exceed $20.0 million at any one time outstanding;

(22) Following the Company-XM Merger Date, Liens incurred by XM 1500 Eckington LLC or XM Investment LLC in connection with a sale leaseback transaction to the extent that the assets of XM 1500 Eckington LLC and XM Investment LLC no longer constitute Excluded Collateral; and

(23) Liens to secure Purchase Money Indebtedness permitted under the provisions described under Section 4.03(b)(15), covering only the assets acquired with or financed by such Indebtedness.

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 4.06. For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

"*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.

"*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.

"*principal*" of a Note means the principal of the Note plus the premium, if any, payable on the Note which is due or overdue or is to become due at the relevant time.

"*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 Company or a Restricted Subsidiary of such asset, including additions and improvements;

provided, however, that such Indebtedness is Incurred within 180 days after the acquisition by the Company or such Restricted Subsidiary of such asset.

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

"*Refinancing Intercreditor Agreement*" means an intercreditor agreement to be entered into between the Collateral Agent and any other holders of First Lien Indebtedness upon the Refinancing of the Existing Credit Agreement Indebtedness.

"*Refinancing Indebtedness*" means Indebtedness that Refinances any Indebtedness of the Company or any Restricted Subsidiary existing on the Issue Date or Incurred in compliance with this Indenture, 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 Stated Maturity of the Notes;

(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 Notes;

(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 Notes, such Refinancing Indebtedness (a) is subordinated in right of payment to the

Notes 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 Stated Maturity of the Notes 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 Notes 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 Company or (B) Indebtedness of the Company or a Restricted Subsidiary that Refinances Indebtedness of an Unrestricted Subsidiary.

"*Related Business*" means any business in which the Company or any of the Restricted Subsidiaries was engaged on the Issue Date and any business related, ancillary or complementary to such business or that constitutes a reasonable extension or expansion thereof, including in connection with the Company's existing and future technology, trademarks and patents 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.

"*Replacement Satellite Vendor Indebtedness*" means Indebtedness of the Company provided by a satellite or satellite launch vendor, insurer or insurance agent or Affiliate thereof for (a) the 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 Company'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 Company to no longer meet the requirements for such service, or (b) the replacement of a spare satellite that has been launched or that is no longer capable of being launched or suitable for launch.

"*Responsible Officer*" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"*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 Company or a Restricted Subsidiary 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, repurchase, redemption, defeasance or other acquisition or retirement for value of any Capital Stock of the Company or any direct or indirect parent of the Company held by any Person (other than by a Restricted Subsidiary) or of any Capital Stock of a Restricted Subsidiary held by any Affiliate of the Company (other than by a Restricted Subsidiary), 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 Company that is not Disqualified Stock);

(3) 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 Company (other than, in the case of this clause (3), from the Company or a Restricted Subsidiary); or

(4) the making of any Investment (other than a Permitted Investment) in any Person.

"*Restricted Subsidiary*" means any Subsidiary of the Company that is not an Unrestricted Subsidiary.

"*Sale/Leaseback Transaction*" means an arrangement relating to property owned by the Company or a Restricted Subsidiary on the Issue Date or thereafter acquired by the Company or a Restricted Subsidiary whereby the Company or a Restricted Subsidiary transfers such property to a Person and the Company or a Restricted Subsidiary leases it from such Person.

"*SEC*" means the U.S. Securities and Exchange Commission.

"*Secured Indebtedness*" means any Indebtedness of the Company secured by a Lien.

"*Securities Act*" means the U.S. Securities Act of 1933, as amended.

"*Security Agreement*" means the Sirius Collateral Agreement.

"*Security Documents*" means (i) prior to the Company-XM Merger Date, the Security Agreement and the Refinancing Intercreditor Agreement and all security documents, mortgages, pledge agreements and other agreements delivered in connection herewith and (ii) following the Company-XM Merger Date, the XM Security Documents and XM Intercreditor Agreement and all security documents, mortgages, pledge agreements and other agreements delivered in connection herewith as in effect at such time.

"*Series of First Lien Indebtedness*" means (a) prior to the Company-XM Merger Date, each of the (i) the Term Loan Financing Indebtedness and (ii) the Notes and any additional Notes and (b) following the Company-XM Merger Date, (i) the Notes and any additional Notes, (ii) any outstanding XM Secured Notes, (iii) any outstanding Term Loan Refinancing Indebtedness and (iv) each other type of outstanding First Lien Indebtedness the holders of which are subject

to the terms of the XM Intercreditor Agreement. "*Significant Subsidiary*" means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"*Significant Subsidiary*" means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"*Sirius Collateral Agreement*" means the Collateral Agreement, dated as of the date hereof, by the Company and the Guarantors in favor of the Collateral Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Standard & Poor's*" or "*S&P*" means Standard & Poor's, 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 Obligations*" means, with respect to a Person, any Indebtedness of such Person (whether outstanding on the Issue Date or thereafter Incurred) which is subordinate or junior in right of payment to the Notes pursuant to a written agreement to that effect.

"*Subscriber*" means (a) prior to a Company-XM Merger or Company-XM Holdings Merger, a subscriber in good standing to the Sirius Radio service that has paid subscription fees for at least one month of such service and whose subscription payments are not delinquent and (b) thereafter, a subscriber in good standing to the XM or Sirius Radio service that has paid subscription fees for at least one month of such service and whose subscription payments are not delinquent.

"*Subsidiary*" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Voting Stock is at the time owned or controlled, directly or indirectly, by:

(1) such Person;

(2) such Person and one or more Subsidiaries of such Person; or

(3) one or more Subsidiaries of such Person.

"*Subsidiary Guarantee*" means, individually, any Guarantee of payment of the Notes by a Subsidiary Guarantor pursuant to the terms of this Indenture and any supplemental indenture thereto, and, collectively, all such Guarantees. Each such Subsidiary Guarantee will be in the form prescribed by this Indenture.

"*Subsidiary Guarantor*" means the Restricted Subsidiaries of the Company who are party to this Indenture on the Issue Date and any other Restricted Subsidiary of the Company that later becomes a Subsidiary Guarantor in accordance with this Indenture.

"*Tangible Assets*" means the Consolidated Total Assets, less goodwill and intangibles, of the Company and its consolidated Restricted Subsidiaries, as shown on the most recent balance sheet of the Company, determined on a consolidated basis in accordance with GAAP; *provided*, that, irrespective of GAAP, Tangible Assets shall include FCC licenses held by the Company or its consolidated Restricted Subsidiaries.

"*Temporary Cash Investments*" 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 that 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 $50,000,000 (or the foreign currency equivalent thereof) and has outstanding debt that 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) 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 Company) 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 S&P;

(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 Company) 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 S&P;

(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 Moody's or "A" by S&P; and

(7) investments in money market funds that, in the aggregate, have at least $1,000,000,000 in assets.

"*Term Loan Refinancing*" means a Refinancing of the Indebtedness outstanding under the Existing Credit Agreement.

"*Term Loan Refinancing Date*" means the date on which the Term Loan Refinancing is consummated.

"*Term Loan Refinancing Indebtedness*" means any additional First Lien Indebtedness incurred in connection with the Term Loan Refinancing.

"*Trustee*" means U.S. Bank National Association until a successor replaces it and, thereafter, means the successor.

"*TT&C Station*" means an earth station operated by the Company or any Restricted Subsidiary for the purpose of providing tracking, telemetry, control and monitoring of any satellite.

"*Uniform Commercial Code*" means the New York Uniform Commercial Code as in effect from time to time.

"*Unrestricted Subsidiary*" means:

(1) at any time prior to the Company-XM Merger Date, XM Holdings, XM and their respective Subsidiaries;

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

(3) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary) 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 Company or any other Subsidiary of the Company 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 4.04.

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary;*provided, however*, that immediately after giving effect to such designation (A) the Company could Incur $1.00 of additional Indebtedness under Section 4.03(a) and (B) no 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.

"*U.S. Government Obligations*" means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer's option.

"*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 Restricted Subsidiary all the Capital Stock of which (other than directors' qualifying shares) is owned by the Company or one or more other Wholly Owned Subsidiaries.

"*XM*" means XM Satellite Radio Inc.

"*XM Holdings*" means XM Satellite Radio Holdings Inc.

"*XM Indenture*" means the Indenture, dated as of June 30, 2009, in respect of the XM Secured Notes.

"*XM Intercreditor Agreement*" means the intercreditor agreements or the collateral agency agreement substantially in the form of Exhibit G to the Collateral Agreement, in either case, as in effect from time to time, including, without limitation, the Intercreditor Agreements and New Collateral Agency Agreement under and as defined in the XM Indenture.

"*XM Secured Notes*" means the 11.25% Senior Secured Notes due 2013 of XM.

"*XM Security Agreement*" means the New Security Agreements as defined in the XM Indenture.

"*XM Security Documents*" means the Security Documents under and as defined in the XM Indenture.

SECTION 1.02. Other Definitions.

Term	Defined In Section
"Affiliate Transaction"	4.07(a)

Term	Defined In Section
"After Acquired Property"	11.01(g)
"After Acquired Property Documents"	11.01(g)
"Appendix"	2.01
"Bankruptcy Code"	6.01
"Change of Control Offer"	4.10(b)
"Comparable Treasury Issue"	3.06(b)
"Comparable Treasury Price"	3.06(b)
"covenant defeasance option"	8.01(b)
"Custodian"	6.01
"DTC"	2.06(c)
"Event of Default"	6.01
"Indemnified Party"	7.07
"Independent Investment Banker"	3.06(b)
"Initial Purchasers"	Appendix
"legal defeasance option"	8.01(b)
"Make Whole Redemption Price"	3.06(b)
"Notice of Default"	6.01
"Offer"	4.06(b)
"Offer Amount"	4.06(c)(1)
"Offer Period"	4.06(c)(1)
"Paying Agent"	2.03(a)
"Primary Treasury Dealer"	3.06(b)
"Protected Purchaser"	2.07
"Purchase Date"	4.06(c)

Term	Defined In Section
"Reference Treasury Dealer"	3.06(b)
"Reference Treasury Dealer Quotations"	3.06(b)
"Registrar"	2.03(a)
"Reporting Additional Interest"	6.13
"Successor Company"	5.01(1)
"Successor Guarantor"	10.04(b)(1)
"Treasury Rate"	3.06(b)

SECTION 1.03. Rules of Construction. Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) "including" means including without limitation;

(5) words in the singular include the plural and words in the plural include the singular;

(6) unsecured Indebtedness shall not be deemed to be subordinate or junior to secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(7) secured Indebtedness shall not be deemed to be subordinate or junior to any other secured Indebtedness merely because it has a junior priority with respect to the same collateral;

(8) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP;

(9) the principal amount of any Preferred Stock shall be (A) the liquidation preference of such Preferred Stock or (B) the maximum mandatory redemption or mandatory repurchase price (not including any redemption or repurchase premium) with respect to such Preferred Stock, whichever is greater;

(10) all references to the date the Notes were originally issued shall refer to the Issue Date; and

(11) all use of the term "days" shall refer to calendar days unless otherwise specified.

ARTICLE 2

The Notes

SECTION 2.01. Form and Dating. Provisions relating to the Notes are set forth in the Rule 144A/Regulation S/IAI Appendix attached hereto (the "*Appendix*") which is hereby incorporated in, and expressly made part of, this Indenture. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit 1 to the Appendix which is hereby incorporated in, and expressly made a part of, this Indenture. The Notes may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Note shall be dated the date of its authentication. The terms of the Notes set forth in the Appendix are part of the terms of this Indenture.

SECTION 2.02. Execution and Authentication. One Officer shall sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

On the Issue Date, the Trustee shall authenticate and deliver $257,000,000 aggregate principal amount of 9.75% Senior Secured Notes due 2015 and, at any time and from time to time thereafter, the Trustee shall authenticate and deliver Notes for original issue in an aggregate principal amount specified in such order, in each case upon a written order of the Company signed by one Officer of the Company. Such order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated and, in the case of an issuance of Additional Notes pursuant to Section 2.13 after the Issue Date, shall certify that such issuance is in compliance with Section 4.03.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate the Notes. Any such appointment shall be evidenced by an instrument signed by a Responsible Officer, a copy of which shall be furnished to the Company. Unless limited by the terms of such appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

SECTION 2.03. Registrar and Paying Agent.

(a) The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (the "*Registrar*") and an office or agency where Notes may be presented for payment (the "*Paying Agent*"). The Registrar shall keep a register of the Notes and of their transfer and exchange. The Company may have one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrars. The term "Paying Agent" includes any additional paying agent.

(b) The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any Wholly Owned Subsidiary incorporated or organized within The United States of America may act as Paying Agent, Registrar, co-registrar or transfer agent.

(c) The Company may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the Trustee; *provided, however,* that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Company and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with Section 2.03(c)(i). The Registrar or Paying Agent may resign at any time upon written notice to the Company and the Trustee; *provided, however,* that the Trustee may resign as Paying Agent or Registrar only if the Trustee also resigns as Trustee in accordance with Section 7.08.

(d) The Company initially appoints the Trustee as Registrar and Paying Agent in connection with the Notes.

SECTION 2.04. Paying Agent To Hold Money in Trust. Prior to each due date of the principal and interest on any Note, the Company shall deposit with the Paying Agent a sum sufficient to pay such principal and interest when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Noteholders or the Trustee all money held by the Paying Agent for the payment of principal of or interest on the Notes and shall notify the Trustee of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon complying with this Section, the Paying Agent shall have no further liability for the money delivered to the Trustee.

SECTION 2.05. Noteholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of

Noteholders. If the Trustee is not the Registrar, the Company shall furnish, or cause the Registrar to furnish, to the Trustee, in writing at least five Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Noteholders.

SECTION 2.06. Transfer and Exchange. (a) The Notes shall be issued in registered form and shall be transferable only upon the surrender of a Note for registration of transfer. When a Note is presented to the Registrar or a co-registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements of this Indenture and Section 8-401(1) of the Uniform Commercial Code are met. When Notes are presented to the Registrar or a co-registrar with a request to exchange them for an equal principal amount of Notes of other denominations, the Registrar shall register the transfer or make the exchange as requested if the same requirements are met. The Company may require payment of a sum sufficient to pay all taxes, assessments and other governmental charges in connection with any transfer or exchange pursuant to this Section. The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of Notes selected for redemption (except, in the case of Notes to be redeemed in part, the portion thereof not to be redeemed) or of any Notes for a period of 15 days before a selection of Notes to be redeemed.

Prior to the due presentation of transfer of any Note the Company, the Trustee, the Paying Agent and the Registrar may deem and treat the person in whose name a Note is registered as the absolute owner of such Note for all purposes of receiving payment of principal of and interest, if any, on such Note and for all other purposes whatsoever, whether or not such security is overdue, and none of the Company, the Trustee, a Paying Agent or the Registrar shall be affected by notice to the contrary.

All securities issues upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(b) Any Registrar appointed pursuant to Section 2.03 shall provide the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Notes upon transfer or exchange of Notes.

(c) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note between or among any member of, or participant in, The Depositary Trust Company ("*DTC*") (or any other securities clearing agency that is registered as such under the Exchange Act and is designated by the Company to act as a depository for such Notes) or other beneficial owners of interests in any Global Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements thereof.

SECTION 2.07. Replacement Notes. If a mutilated Note is surrendered to the Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Note if the requirements of Section 8-405 of the Uniform Commercial Code are met and the Holder (a) satisfies the Company or the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Company or the Trustee prior to the Note being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "*Protected Purchaser*") and (c) satisfies any other reasonable requirements of the Trustee. If required by the Trustee or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Company and the Trustee to protect the Company, the Trustee, the Paying Agent, the Registrar and any co-registrar from any loss which any of them may suffer if a Note is replaced. The Company and the Trustee may charge the Holder for their expenses in replacing a Note (including, attorneys' fees and disbursements in replacing such security). In the event any such mutilated, lost, destroyed or wrongfully taken Note has become or is about to become due and payable, the Company in its discretion may pay such Note instead of issuing a new Note in replacement thereof.

Every replacement Note is an additional obligation of the Company.

SECTION 2.08. Outstanding Notes. Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section as not outstanding. Subject to Section 12.05, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Note is held by a Protected Purchaser.

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Notes (or portions thereof) to be redeemed or maturing, as the case may be, then on and after that date such Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.09. Temporary Notes. Until Definitive Notes are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of Definitive Notes but may have variations that the Company considers appropriate for temporary Notes. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate Definitive Notes and deliver them in exchange for temporary Notes at the office or agency of the Company.

SECTION 2.10. Cancellation. The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no

one else shall cancel and dispose of (subject to the record retention requirements of the Exchange Act) all Notes surrendered for registration of transfer, exchange, payment or cancellation in accordance with its customary procedures for the disposition of cancelled securities and deliver a certificate of such disposition to the Company unless the Company directs the Trustee to deliver canceled Notes to the Company. The Company may not issue new Notes to replace Notes it has redeemed, paid or delivered to the Trustee for cancellation.

SECTION 2.11. Defaulted Interest. If the Company defaults in a payment of interest on the Notes, the Company shall pay defaulted interest (plus interest on such defaulted interest to the extent lawful) in any lawful manner. The Company may pay the defaulted interest to the persons who are Noteholders on a subsequent special record date. The Company shall fix or cause to be fixed any such special record date and payment date to the reasonable satisfaction of the Trustee and shall promptly mail to each Noteholder a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

SECTION 2.12. CUSIP Numbers, ISINs, etc. The Company in issuing the Notes may use "CUSIP" numbers, ISINs and "Common Code" numbers (in each case if then generally in use) and, if so, the Trustee shall use "CUSIP" numbers, ISINs and "Common Code" numbers in notices of redemption as a convenience to Holders; *provided, however,* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall advise the Trustee in writing of any change in any "CUSIP" numbers, ISINs or "Common Code" numbers applicable to the Notes.

SECTION 2.13. Issuance of Additional Notes. After the Issue Date, the Company shall be entitled, subject to its compliance with Section 4.03, to issue Additional Notes under this Indenture, which Notes shall have identical terms as the Notes issued on the Issue Date, other than with respect to the date of issuance and issue price. All the Notes issued under this Indenture shall be treated as a single class for all purposes of this Indenture including waivers, amendments, redemptions and offers to purchase.

With respect to any Additional Notes, the Company shall set forth in a resolution of the Board of Directors and an Officers' Certificate, a copy of each which shall be delivered to the Trustee, the following information:

(1) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture and the provision of Section 4.03 that the Company is relying on to issue such Additional Notes; and

(2) the issue price, the issue date and the CUSIP number of such Additional Notes.

ARTICLE 3

Redemption

SECTION 3.01. Selection of Notes to Be Redeemed. If fewer than all the Notes are to be redeemed, the Registrar shall select the Notes to be redeemed using any method that it deems fair and appropriate. However, if the Notes are solely registered in the name of Cede & Co. and traded through DTC, then DTC shall select the Notes to be redeemed in accordance with its practices. The Trustee shall make the selection from outstanding Notes not previously called for redemption. The Trustee may select for redemption portions of the principal of Notes that have denominations larger than $2,000. Notes and portions of them the Trustee selects shall be in principal amounts of $2,000 or whole multiples of $1,000 in excess of $2,000. Provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption. The Trustee shall notify the Company promptly of the Notes or portions of Notes to be redeemed.

SECTION 3.02. Notice of Redemption. At least 30 days but not more than 60 days before a date for redemption of Notes, the Company shall mail or cause to be mailed a notice of redemption by first-class mail to each Holder of Notes to be redeemed at such Holder's registered address.

The notice shall identify the Notes to be redeemed and shall state:

(1) the redemption date;

(2) the redemption price;

(3) the name and address of the Paying Agent;

(4) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price, plus accrued interest;

(5) if fewer than all the outstanding Notes are to be redeemed, the certificate numbers and principal amounts of the particular Notes to be redeemed;

(6) that, unless the Company defaults in making such redemption payment, interest on Notes (or portion thereof) called for redemption ceases to accrue on and after the redemption date;

(7) the "CUSIP" number, ISIN or "Common Code" number, if any, printed on the Notes being redeemed; and

(8) that no representation is made as to the correctness or accuracy of the "CUSIP" number, ISIN, or "Common Code" number, if any, listed in such notice or printed on the Notes.

At the Company's request, delivered at least 15 days before the date such notice is to be given to the Holder (unless a shorter period shall be acceptable to the Trustee), the Trustee shall give the notice of redemption in the Company's name and at the Company's expense. In such event, the Company shall provide the Trustee with the information required by this Section.

SECTION 3.03. Effect of Notice of Redemption. Once notice of redemption is mailed, Notes called for redemption become due and payable on the redemption date and at the redemption price stated in the notice. Upon surrender to the Paying Agent, such Notes shall be paid at the redemption price stated in the notice, plus accrued interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the related interest payment date), and such Notes shall be canceled by the Trustee. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

SECTION 3.04. Deposit of Redemption Price. Prior to the redemption date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued interest on all Notes to be redeemed on that date other than Notes or portions of Notes called for redemption which have been delivered by the Company to the Trustee for cancellation.

SECTION 3.05. Notes Redeemed in Part. Upon surrender of a Note that is redeemed in part, the Company shall execute and the Trustee shall authenticate for the Holder (at the Company's expense) a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

SECTION 3.06. Optional Redemption.

(a) At any time prior to September 1, 2012, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under this Indenture at a redemption price equal to 109.75% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date), with the Net Cash Proceeds from the issuance or sale of Capital Stock of the Company; *provided* that:

(1) at least 65% of the aggregate principal amount of Notes originally issued under this Indenture (excluding Notes held by the Company and its Affiliates) remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption occurs within 45 days of the date of the closing of such issuance or sale of Capital Stock.

(b) At any time prior to September 1, 2012, the Company, at its option, may redeem all, or from time to time, any part of the Notes on not less than 30 days nor more than 60 days notice as provided in paragraph 6 of the Notes (except that, notwithstanding the provisions of Section 3.02 of this Indenture, any notice of redemption for the Notes given pursuant to this Section need not set forth the Redemption Price but only the manner of calculation thereof) at a

redemption price ("*Make Whole Redemption Price*") equal to the greater of the following amounts:

(1) 100% of the principal amount of the Notes then outstanding to be so redeemed; and

(2) the sum of the redemption price of the Note at September 1, 2012 (such redemption price being set forth in the table in Section 3.06(d)) and the present values of the remaining scheduled payments of interest on the Notes to be redeemed to, but excluding, September 1, 2012, discounted to the applicable redemption date in accordance with customary market practice on a semi-annual basis at a rate equal to the sum of the Treasury Rate plus 0.50%;

plus, in each of the above cases (b)(1) and (b)(2), accrued and unpaid interest, if any, on the principal amount being redeemed to the applicable redemption date.

The Make Whole Redemption Price for the Notes will be calculated by the Independent Investment Banker assuming a 360-day year consisting of twelve 30-day months. For purposes of calculating the Make Whole Redemption Price pursuant to the foregoing optional redemption provisions, the following terms will have the meanings set forth below:

"*Comparable Treasury Issue*" means the U.S. Treasury security or securities selected by the Independent Investment Banker as having an actual or interpolated maturity most nearly equal to the period from the redemption date to September 1, 2012; *provided*, that if the period from the redemption date to September 1, 2012 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Comparable Treasury Price*" means, with respect to any redemption date:

(1) the average of the Reference Treasury Dealer Quotations for that redemption date, after excluding the highest and lowest of the Reference Treasury Dealer Quotations;

(2) if the Trustee obtains fewer than four Reference Treasury Dealer Quotations, the average of all Reference Treasury Dealer Quotations so received; or

(3) if only one Reference Treasury Dealer Quotation is received, such quotation.

"*Independent Investment Banker*" means one of the Reference Treasury Dealers selected by the Company.

"*Reference Treasury Dealer*" means each of four primary U.S. Government securities dealers in New York City (each a "*Primary Treasury Dealer*"), consisting of (i) J.P. Morgan Securities Inc. (or its affiliate), and (ii) three other nationally recognized investment banking firms (or their affiliates) that the Company selects in connection with the particular redemption,

and their respective successors, provided that if any of them ceases to be a Primary Treasury Dealer, the Company will substitute another nationally recognized investment banking firm (or its affiliate) that is a Primary Treasury Dealer.

"*Reference Treasury Dealer Quotations*" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 3:30 p.m., New York City time, on the third Business Day preceding that redemption date.

"*Treasury Rate*" means, with respect to any redemption date, the rate per year equal to the semi-annual equivalent yield to maturity or interpolated maturity (on a day count basis) of the Comparable Treasury Issue, calculated on the third Business Day preceding the applicable redemption date, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for that redemption date.

(c) Except pursuant Section 3.06(a) or Section 3.06(b), the Notes shall not be redeemable at the Company's option prior to September 1, 2012.

(d) On or after September 1, 2012, the Company may on any one or more occasions redeem all or a part of the Notes upon not less than 30 days nor more than 60 days notice, at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest and additional interest, if any, on the Notes redeemed to, but excluding, the applicable redemption date, if redeemed during the twelve-month period beginning on September 1 of the years indicated below, subject to the rights of Holders on the relevant record date to receive interest and additional interest, if any, on the relevant interest payment date:

Year	Percentage
2012	104.875%
2013	102.438%
2014 and thereafter	100.000%

(e) Any redemption pursuant to this Section 3.06 shall be made in a manner consistent with the provisions of Sections 3.01 through 3.05 hereof to the extent applicable.

Unless the Company defaults in the payment of the applicable redemption price, on and after the applicable redemption date, interest will cease to accrue on the Notes or portions of the Notes called for redemption.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business, on such record date, and no additional interest shall be payable to Holders whose Notes are subject to redemption by the Company.

ARTICLE 4

Covenants

SECTION 4.01. Payment of Notes. The Company shall promptly pay the principal of and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. Principal and interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal and interest then due.

The Company shall pay interest on overdue principal at the rate specified therefor in the Notes, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

SECTION 4.02. SEC Reports.

(a) So long as any Notes are outstanding, the Company will furnish to the Trustee and the Holders:

(1) within 90 days after the end of each fiscal year, annual reports of the Company containing substantially all of the information that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act if the Company had been a reporting company under the Exchange Act (but only to the extent similar information was included in the Offering Memorandum), including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) audited financial statements prepared in accordance with GAAP or to the extent the Company is a reporting Company, the Annual Report on Form 10-K as filed under the Exchange Act;

(2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, quarterly reports of the Company containing substantially all of the information that would have been required to be contained in a Quarterly Report on Form 10-Q under the Exchange Act if the Company had been a reporting company under the Exchange Act (but only to the extent similar information was provided in the Offering Memorandum), including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) unaudited quarterly financial statements prepared in accordance with GAAP and reviewed pursuant to Statement on Auditing Standards No. 100 (or any successor provision) or to the extent the Company is a reporting Company, the Quarterly Report on Form 10-Q as filed under the Exchange Act; and

(3) within five Business Days after the occurrence of each event that would have been required to be reported in a Current Report on Form 8-K under the Exchange Act if the Company had been a reporting company under the Exchange Act, current reports containing substantially all of the information that would have been required to be contained in a Current Report on Form 8-K under the Exchange Act if the Company had been a reporting company under the Exchange Act; *provided*, *however*, that no such current report will be required to be furnished if the Company determines in its good faith judgment that such event is not material to Holders or the business, assets, operations, financial positions or prospects of the Company and its Restricted Subsidiaries, taken as a whole, provided, however, so long as the Company is a reporting company, the Company will provide all Current Reports on Form 8-K under the Exchange Act;

provided, *however*, that such reports (A) so long as the Company is not a reporting company, will not be required to comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the SEC, or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein) and (B) following a Company-XM Holdings Merger or a Company-XM Merger, will not be required to contain the separate financial information for Guarantors contemplated by Rule 3-10 or Rule 3-16 of Regulation S-X promulgated by the SEC. The availability of the foregoing materials on the SEC's Edgar service shall be deemed to satisfy the delivery obligation of the Company.

(b) So long as any Notes are outstanding, the Company will also maintain a public website to which all of the reports required by Section 4.02(a) are posted.

In addition, the Company shall furnish to Holders, prospective investors approved by the Company, broker-dealers approved by the Company and securities analysts, upon their request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes are not freely transferable under the Securities Act. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 4.03. Limitation on Indebtedness.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Indebtedness; *provided, however,* that the Company and any Subsidiary Guarantor 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 Company and the Restricted Subsidiaries shall be entitled to Incur any or all of the following Indebtedness:

(1) Indebtedness Incurred by the Company or any of its Restricted Subsidiaries under this Section 4.03(b)(1) that, after giving effect to any such Incurrence, does not exceed $150 million at any time outstanding;

(2) Indebtedness of the Company in an aggregate principal amount which, when taken together with all other Indebtedness of the Company Incurred pursuant to this Section 4.03(b)(2) and then outstanding, does not exceed 175% of the Net Cash Proceeds received by the Company since immediately after the Issue Date from the issue or sale of Capital Stock of the Company or cash contributed to the capital of the Company (in each case other than proceeds of Disqualified Stock or sales of Capital Stock to the Company or any of its Subsidiaries); *provided, however,* that (A) any Indebtedness Incurred under this Section 4.03(b)(2) after September 1, 2013 shall have a weighted Average Life that is greater than the then remaining weighted Average Life of the Notes and (B) any Indebtedness Incurred under this Section 4.03(b)(2) shall consist only of Subordinated Obligations; *provided further, however,* that any Net Cash Proceeds or cash contributions received by the Company pursuant to this Section 4.03(b)(2) and used to Incur Indebtedness pursuant to this Section 4.03(b)(2), shall be excluded from the calculation of amounts under Section 4.04(a)(3)(B);

(3) Indebtedness owed to and held by the Company or a Restricted Subsidiary;*provided, however,* that (A) any subsequent issuance or transfer of any Capital Stock which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the obligor thereon and (B) if the Company 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 Notes;

(4) the Notes (other than any Additional Notes) and the Note Guarantees;

(5) Indebtedness of the Company or its Subsidiaries outstanding on the Issue Date;

(6) Indebtedness of a Restricted Subsidiary Incurred and outstanding on or prior to the date on which such Subsidiary was acquired by the Company (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 Company); *provided, however,* that on the date of such acquisition and after giving *pro forma* effect thereto, the Company would have been entitled to Incur at least $1.00 of additional Indebtedness pursuant to Section 4.03(a);

(7) Refinancing Indebtedness in respect of Indebtedness Incurred pursuant to Section 4.03(a) or pursuant to clause (2), (4), (5), (6), (13) or (14) of this Section 4.03(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 Company and its Restricted Subsidiaries pursuant to this Indenture;

(9) obligations in respect of workers' compensation claims, self-insurance obligations, performance, bid and surety bonds and completion guarantees provided by the Company or any Restricted Subsidiary 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) Unsecured Subordinated Obligations or Disqualified Stock of the Company in an aggregate principal amount not in excess of $250 million outstanding (at any one time) Incurred to finance the construction, expansion, development or acquisition of music libraries and other recorded music programming, furniture, fixtures and equipment (including satellites, ground stations and related equipment) if such Subordinated Obligations or Disqualified Stock, as applicable, has a weighted Average Life longer than the weighted Average Life of the Notes and has a final Stated Maturity of principal later than the Stated Maturity of the principal of the Notes;

(12) Indebtedness arising from agreements of the Company or any of its Restricted Subsidiaries 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 Restricted Subsidiary; *provided, however,* the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

(13) Any Indebtedness which becomes an Obligation of the Company as a result of a Company-XM Holdings Merger or a Company-XM Merger;

(14) Replacement Satellite Vendor Indebtedness;

(15) Purchase Money Obligations, Attributable Debt in respect of Sale/Leaseback Transactions and Capital Lease Obligations of the Company or any of its Restricted Subsidiaries in an aggregate principal amount not in excess of $50 million at any time outstanding; and

(16) Unsecured Subordinated Obligations or Disqualified Stock of the Company in an aggregate principal amount (or liquidation preference, as applicable), (including the aggregate principal amount (or liquidation preference, as applicable) of all Refinancing Indebtedness Incurred to refund, Refinance or replace any Indebtedness or

Disqualified Stock, as applicable, Incurred pursuant to this Section 4.03(b)(16)) at any time outstanding not to exceed the product of (a) $100.00 and (b) the number of Subscribers at such time if such subordinated Indebtedness or Disqualified Stock, as applicable, has a weighted Average Life longer than the weighted Average Life of the Notes and has a final maturity date later than the final maturity date of the Notes.

(c) Notwithstanding the foregoing, the Company shall not be entitled to Incur any Indebtedness pursuant to Section 4.03(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations of the Company unless such Indebtedness shall be subordinated to the Notes to at least the same extent as such Subordinated Obligations.

(d) For purposes of determining compliance with this Section 4.03:

(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 in Sections 4.03(a), (b) and (c), the Company, 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 Company 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 clauses (1), (2) or (15) of Section 4.03(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 4.03(a) from and after the first date on which the Company could have Incurred such Indebtedness under Section 4.03(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;

(5) any Disqualified Stock of the Company or Preferred Stock of a Restricted Subsidiary will be deemed to have a principal amount 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; and

(6) Increases in the amount of Indebtedness solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 4.03.

SECTION 4.04. Limitation on Restricted Payments.

(a) The Company shall not, and shall not permit any Restricted Subsidiary, directly or indirectly, to, make a Restricted Payment if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(1) a Default shall have occurred and be continuing (or would result therefrom);

(2) the Company either (A) is not entitled to Incur an additional $1.00 of Indebtedness under Section 4.03(a) or (B) would have, after giving effect, on a *pro forma* basis, a First Lien Leverage Ratio greater than 2.50 to 1; 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 Company 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 Company 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 Company and other than an issuance or sale to an employee stock ownership plan or to a trust established by the Company or any of its Subsidiaries for the benefit of their employees) and 100% of any cash capital contribution received by the Company from its stockholders subsequent to the Issue Date and, 100% of the fair market value (as determined by the Board of Directors) of the consideration (if other than cash) from the issue or sale of Capital Stock (other than Disqualified Stock) of the Company; *provided*, *however*, that any Net Cash Proceeds received by the Company from the issue or sale of its Capital Stock or cash capital contributions received by the Company and used to Incur Indebtedness pursuant to Section 4.03(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 4.03(b)(2) in respect of such Net Cash Proceeds or cash capital contributions has been treated, pursuant to Section 4.03(b)(3), as Incurred pursuant to Section 4.03(a); plus

(C) the amount by which Indebtedness of the Company or any Restricted Subsidiary is reduced on the Company'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 Company (less the amount of any cash, or the fair value (as determined in good faith by the Board of Directors) of any other property, distributed by the Company 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 Company or any

Restricted Subsidiary 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 Company or any Restricted Subsidiary, and (ii) to the extent such Person is an Unrestricted Subsidiary, the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value (as determined in good faith by the Board of Directors) of the net assets of such Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary; *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 Company or any Restricted Subsidiary in such Person or Unrestricted Subsidiary.

(b) The preceding provisions of Section 4.04(a) shall not prohibit:

(1) any Restricted Payment made within 90 days of the receipt of Net Cash Proceeds from the sale of, or made by exchange for, Capital Stock of the Company (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Company or an employee stock ownership plan or a trust established by the Company or any of its Subsidiaries for the benefit of their employees) or a substantially concurrent cash capital contribution received by the Company; *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 4.04(a)(3)(B);

(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Obligations of the Company made within 90 days by exchange for, or out of the proceeds of, the Incurrence of Indebtedness of such Person which is permitted to be Incurred pursuant to Section 4.03; *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 Subordinated Obligations of the Company Incurred pursuant to Section 4.03(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 Notes and a Stated Maturity that is later than the date that is 91 days after the Stated Maturity of the Notes; *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 4.04; *provided, however,* that such dividend shall be included in subsequent calculations of the amount of Restricted Payments;

(5) the declaration or payment of dividends on Disqualified Stock issued pursuant to Section 4.03;*provided, however,* that at the time of declaration of such dividend, no 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;

(6) 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;

(7) cash payments in lieu of the issuance of fractional shares in connection with a reverse stock split of the Capital Stock of the Company or the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company; *provided, however,* that any such cash payment shall not be for the purpose of evading the limitation of this Section 4.04(b) (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;

(8) in the event of a Change of Control or to the extent permitted by Section 4.06, and if no Default shall have occurred and be continuing, the payment, purchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations of the Company, 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 Company (or a third party to the extent permitted by this Indenture) has made a Change of Control Offer or Offer with respect to the Notes and has repurchased all Notes validly tendered and not withdrawn in connection with such Change of Control Offer or Offer; *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;

(9) payments of intercompany Subordinated Obligations, the Incurrence of which was permitted under Section 4.03(b)(3); *provided, however,* that no 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;

(10) the repurchase, redemption or other acquisition or retirement for value of any equity interests of the Company (other than Disqualified Stock) held by any employee or director of the Company 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 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) so long as no Default has occurred and is continuing, (A) the purchase, redemption or other acquisition of shares of Capital Stock of the Company or any of its Subsidiaries from employees, former employees, directors or former directors of the Company 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 Company or any Subsidiary of the Company the proceeds of which are used to purchase Capital Stock of the Company, 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 will be excluded from subsequent calculations of the amount of Restricted Payments;

(12) any Restricted Payment to an Affiliate for the provision of administrative, management, content or other business services, in each case to the extent permitted by Section 4.07; and

(13) other Restricted Payments in an amount not to exceed $40 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 (13) do not exceed $100 million in the aggregate in any calendar year; *provided further*, however, that no 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 Company or such Restricted Subsidiary, 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 Company acting in good faith.

SECTION 4.05. Limitation on Restrictions on Distributions from Restricted Subsidiaries. The Company shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction

on the ability of any Restricted Subsidiary to (a) pay dividends or make any other distributions on its Capital Stock to the Company or a Restricted Subsidiary or pay any Indebtedness owed to the Company or any Restricted Subsidiary, (b) make any loans or advances to the Company or any Restricted Subsidiary or (c) transfer any of its property or assets to the Company or any Restricted Subsidiary, 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 Issue Date;

(B) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement relating to any Capital Stock or Indebtedness Incurred by such Restricted Subsidiary on or prior to the date on which such Restricted Subsidiary was acquired by the Company (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 Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Company) 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 4.05(1)(A) or (B) or this clause (C) or contained in any amendments, modifications, restatements, renewals, increases, supplements, refundings or replacements to an agreement referred to in Section 4.05(1)(A) or (B) or this clause (C); *provided, however,* that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such refinancing agreement or amendment are no less favorable in any material respect to the Noteholders than encumbrances and restrictions with respect to such Restricted Subsidiary contained in such predecessor agreements on the Issue Date or the date such Restricted Subsidiary became a Restricted Subsidiary, whichever is applicable;

(D) any encumbrance or restriction with respect to a Restricted Subsidiary (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 Restricted Subsidiary (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 or restrictions on cash or other deposits in leases and other agreements entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(F) any encumbrance or restriction consisting of customary provisions in joint venture agreements relating to joint ventures that are not Restricted

Subsidiaries and other similar agreements entered into in the ordinary course of business; and

(G) customary non-assignment provisions in contracts, licenses and leases entered into in the ordinary course of business; and

(2) with respect to clause Section 4.05(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 Restricted Subsidiary 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 Indebtedness for property acquired in the ordinary course of business and (ii) Capitalized Lease Obligations permitted under this Indenture, in each case, that impose encumbrances or restrictions of the nature described in Section 4.05(c) on the property so acquired;

(D) any encumbrance or restriction pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Restricted Subsidiary;

(E) applicable law; and

(F) Liens securing Indebtedness that limit the right of the debtor to dispose of the assets subject to such Lien.

SECTION 4.06. Limitation on Sales of Assets and Subsidiary Stock.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Disposition unless:

(1) with respect to any Asset Disposition not constituting an Event of Loss, the Company or such Restricted Subsidiary 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 Company, of the shares and assets subject to such Asset Disposition;

(2) with respect to any Asset Disposition not constituting an Event of Loss, at least 75% of the consideration thereof received by the Company or such Restricted Subsidiary is in the form of cash or cash equivalents; and

(3) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Company or such Restricted Subsidiary, as the case may be, at such Person's election in the case of clauses (A), (B) or (C) below:

(A) to prepay, repay, redeem or purchase First Lien Indebtedness of the Company (including the Notes) (other than Indebtedness owed to the Company) within one year from the later of the date of such Asset Disposition or the receipt of such Net Available Cash;

(B) to the extent of proceeds from an Asset Disposition of Collateral, to acquire Additional Assets that become part of the Collateral 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 Company 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;

(C) to the extent of proceeds from an Asset Disposition not involving Collateral, 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 Company shall have an additional six months to apply such Net Available Cash pursuant to this clause (C) 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/or

(D) to the extent of the balance of such Net Available Cash after application in accordance with clauses (A), (B) and (C), to make an offer to the holders of the Notes (and if applicable, redeem (or make an offer to do so) other First Lien Indebtedness of the Company the provisions of which require the Company to redeem such Indebtedness with the proceeds from any Asset Sales (or offer to do so)) to purchase Notes (and such other First Lien Indebtedness of the Company) pursuant to and subject to the conditions contained in this Indenture;

provided, however, that in connection with any prepayment, repayment or purchase of Indebtedness pursuant to clause (A) or (D) above, the Company or such Restricted Subsidiary 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; *provided, further, however,* that the prior proviso shall not affect the ability of the Company or such Restricted Subsidiary to Incur Indebtedness under Section 4.03(b).

Notwithstanding the foregoing provisions of this Section 4.06(a), the Company and the Restricted Subsidiaries shall not be required to apply any Net Available Cash in accordance with this Section 4.06(a) except to the extent that the aggregate Net Available Cash from all Asset Dispositions which is not applied in accordance with this Section 4.06(a) exceeds

$10 million. Pending application of Net Available Cash pursuant to this Section 4.06(a), such Net Available Cash shall be invested in Temporary Cash Investments or applied to temporarily reduce any revolving credit indebtedness.

For the purposes of this Section 4.06(a), the following are deemed to be cash or cash equivalents:

(1) the assumption or discharge of Indebtedness of the Company (other than Obligations in respect of Disqualified Stock of the Company) or any Restricted Subsidiary or other liabilities (as shown on the most recent balance sheet (or notes thereto) of the Company or the Restricted Subsidiary) and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness or from such other liabilities in connection with such Asset Disposition (in which case, such Person 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 Company or any Restricted Subsidiary from the transferee that are converted within 30 days by the Company or such Restricted Subsidiary into cash, to the extent of cash received in that conversion.

(b) In the event of an Asset Disposition that requires the purchase of Notes (and other First Lien Indebtedness of the Company) pursuant to Section 4.06(a)(3)(D), the Company shall purchase Notes tendered pursuant to an offer by the Company for the Notes (and such other First Lien Indebtedness) (the "*Offer*") at a purchase price of 100% of their principal amount (or, in the event the Notes or such other First Lien Indebtedness of the Company was issued with significant original issue discount, 100% of the accreted value thereof) without premium, plus accrued but unpaid interest (or, in respect of such other First Lien Indebtedness of the Company, such lesser price, if any, as may be provided for by the terms of such First Lien Indebtedness) in accordance with the procedures (including prorating in the event of oversubscription) set forth in Section 4.06(c). If the aggregate purchase price of the Notes tendered exceeds the Net Available Cash allotted to their purchase, the Company shall select the Notes to be purchased on a pro rata basis but in round denominations, which in the case of the Notes will be denominations of $2,000 principal amount or multiples of $1,000 in excess of $2,000. The Company shall not be required to make such an offer to purchase Notes (and other First Lien Indebtedness of the Company) pursuant to Section 4.06(a)(3)(D) 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 to purchase, 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 Company becomes obligated to make an Offer, the Company shall deliver to the Trustee and send, by first-class mail to each Holder, a written notice stating that the Holder may elect to have his Notes purchased by the Company either in whole or in part (subject to prorating as described in Section 4.06(b) in the event the Offer is oversubscribed) in integral multiples of $2,000 of principal amount, at the applicable purchase price. The notice shall specify a purchase date not less than 30 days nor

more than 60 days after the date of such notice (the "*Purchase Date*") and shall contain such information concerning the business of the Company which the Company in good faith believes will enable such Holders to make an informed decision (which at a minimum will include (A) the most recent annual report, quarterly report and any current report delivered to the Trustee in the prior 90 days pursuant to Section 4.02(a), 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 Company's business subsequent to the date of the latest of such reports and (C) if material, appropriate *pro forma* financial information) and all instructions and materials necessary to tender Notes pursuant to the Offer, together with the information contained in clause (3) below.

(1) Not later than the date upon which written notice of an Offer is delivered to the Trustee as provided below, the Company shall deliver to the Trustee an Officers' Certificate as to (A) the amount of the Offer (the "*Offer Amount*"), including information as to any other First Lien 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 4.06(a) and (b). On such date, the Company shall also irrevocably deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust) in Temporary Cash Investments, maturing on the last day prior to the Purchase Date or on the Purchase Date if funds are immediately available by open of business, an amount equal to the Offer Amount to be held for payment in accordance with the provisions of this Section. If the Offer includes other First Lien Indebtedness, the deposit described in the preceding sentence may be made with any other paying agent pursuant to arrangements satisfactory to the Trustee. Upon the expiration of the period for which the Offer remains open (the "*Offer Period*"), the Company shall deliver to the Trustee for cancellation the Notes or portions thereof which have been properly tendered to and are to be accepted by the Company. The Trustee shall, on the Purchase Date, mail or deliver payment (or cause the delivery of payment) to each tendering Holder in the amount of the purchase price. In the event that the aggregate purchase price of the Notes delivered by the Company to the Trustee is less than the Offer Amount applicable to the Notes, the Trustee shall deliver the excess to the Company promptly after the expiration of the Offer Period for application in accordance with this Section 4.06.

(2) Holders electing to have a Note purchased shall be required to surrender the Note, with an appropriate form duly completed, to the Company at the address specified in the notice at least three Business Days prior to the Purchase Date. Holders shall be entitled to withdraw their election if the Trustee or the Company receives not later than one Business Day prior to the Purchase Date, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note which was delivered for purchase by the Holder and a statement that such Holder is withdrawing his election to have such Note purchased. Holders whose Notes are purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(3) At the time the Company delivers Notes to the Trustee which are to be accepted for purchase, the Company shall also deliver an Officers' Certificate stating that such Notes are to be accepted by the Company pursuant to and in accordance with the terms of this Section 4.06. A Note shall be deemed to have been accepted for purchase at the time the Trustee, directly or through an agent, mails or delivers payment therefor to the surrendering Holder.

(d) The Company shall not, and shall not permit any Restricted Subsidiary 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 Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) to the extent that the Asset Swap involves Collateral, the Related Business Assets received in the Asset Swap become part of the Collateral;

(3) in the event such Asset Swap involves the transfer by the Company or any Restricted Subsidiary of assets having an aggregate fair market value, as determined by the Board of Directors of the Company in good faith, in excess of $5 million, the terms of such Asset Swap have been approved by a majority of the members of the Board of Directors of the Company; and

(4) in the event such Asset Swap involves the transfer by the Company or any Restricted Subsidiary of assets having an aggregate fair market value, as determined by the Board of Directors of the Company in good faith, in excess of $20 million, the Company has received a written opinion from an Independent Qualified Party that such Asset Swap is fair to the Company or such Restricted Subsidiary, as the case may be, from a financial point of view.

(e) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Indenture and this Section 4.06. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.06, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Indenture and this Section 4.06 by virtue of its compliance with such securities laws or regulations.

SECTION 4.07. Limitation on Affiliate Transactions.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, enter into or conduct 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 Company (an "*Affiliate Transaction*") unless:

(1) the terms of the Affiliate Transaction are no less favorable to the Company or such Restricted Subsidiary 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 directors of the Company who have no direct financial interest with respect to such Affiliate Transaction (other than as a stockholder of the Company) 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 Company and its Restricted Subsidiaries or is not less favorable to the Company and its Restricted Subsidiaries 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 4.04(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 or other employee benefit plans approved by the Board of Directors or entered into in the ordinary course of business;

(3) to the extent permitted by applicable law, loans or advances to employees in the ordinary course of business in accordance with the past practices of the Company or its Restricted Subsidiaries, 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 Company and its Restricted Subsidiaries who are not employees of the Company or its Restricted Subsidiaries;

(5) any transaction with the Company, a Restricted Subsidiary or joint venture or similar entity which would constitute an Affiliate Transaction solely because the Company or a Restricted Subsidiary owns an equity interest in or otherwise controls such Restricted Subsidiary, joint venture or similar entity;

(6) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Company to Affiliates of the Company and the granting of registration and other customary rights in connection therewith;

(7) any agreement as in effect on the Issue Date and described in the Offering Memorandum, 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 in any material respect to the Company or the Restricted Subsidiaries) and the transactions evidenced thereby;

(8) any transaction by the Company or any Restricted Subsidiary with an Affiliate related to the purchase, sale or distribution of Company radios, subscription to Company services or other products or services in the ordinary course of business including any such transaction with an automotive manufacturer or similar business partner, which has been approved by a majority of the members of the Board of Directors who have no direct financial interest with respect to such Affiliate Transaction (other than as a stockholder of the Company);

(9) a Company-XM Holdings Merger or a Company-XM Merger;

(10) any transaction between the Company and a Restricted Subsidiary or between Restricted Subsidiaries; and

(11) Investments described in clause (16) of the definition of Permitted Investment in Section 1.01 herein.

SECTION 4.08. Limitation on Line of Business. The Company shall not, and shall not permit any Restricted Subsidiary, to engage in any business other than a Related Business.

SECTION 4.09. Limitation on the Sale or Issuance of Capital Stock of Restricted Subsidiaries. The Company:

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

(2) shall not permit any Restricted Subsidiary 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 Company or a Wholly Owned Subsidiary), unless

(A) immediately after giving effect to such issuance, sale or other disposition, neither the Company nor any of its Subsidiaries own any Capital Stock of such Restricted Subsidiary;

(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 Restricted Subsidiary would continue to be a Restricted Subsidiary; or

(C) immediately after giving effect to such issuance, sale or other disposition, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any Investment in such Person remaining after giving effect thereto is treated as a new Investment by the Company and such Investment would be permitted to be made under Section 4.04 if made on the date of such issuance, sale or other disposition.

For purposes of this Section 4.09, the creation of a Lien on any Capital Stock of a Restricted Subsidiary to secure Indebtedness of the Company or any of its Restricted Subsidiaries will not be deemed to be a violation of this Section 4.09; *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 4.09.

SECTION 4.10. Change of Control.

(a) Upon the occurrence of a Change of Control, each Holder shall have the right to require that the Company repurchase such Holder's Notes at a purchase price in cash equal to 101% of the principal amount thereof on the date of purchase plus accrued and unpaid interest, if any, to, but excluding, the date of purchase (subject to the right of holders of record on the relevant record date to receive interest, if any, due on the relevant interest payment date), in accordance with the terms contemplated in Section 4.10(b).

(b) Within 30 days following any Change of Control, the Company shall mail a notice to each Holder with a copy to the Trustee (the "*Change of Control Offer*") stating:

(1) that a Change of Control has occurred and that such Holder has the right to require the Company to purchase such Holder's Notes at a purchase price in cash equal to 101% of the principal amount thereof on the date of purchase, plus accrued and unpaid interest to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest on the relevant interest payment date);

(2) the circumstances and relevant facts regarding such Change of Control (including information with respect to*pro forma* historical income, cash flow and capitalization, in each case after giving effect to such Change of Control);

(3) the Purchase Date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed); and

(4) the instructions, as determined by the Company, consistent with this Indenture and this Section 4.10, that a Holder must follow in order to have its Notes repurchased.

(c) Holders electing to have a Note repurchased under this Section 4.10 will be required to surrender the Note, with an appropriate form duly completed, to the Company at the address specified in the notice at least three Business Days prior to the Purchase Date. Holders will be entitled to withdraw their election if the Trustee or the Company receives not later than one Business Day prior to the Purchase Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note which was delivered for purchase by the Holder and a statement that such Holder is withdrawing his election to have such Note purchased.

(d) On the Purchase Date, all Notes purchased by the Company under this Section 4.10 shall be delivered by the Company to the Trustee for cancellation, and in accordance with Section 4.10(a), the Company shall pay the purchase price plus accrued and unpaid interest, if any, to the Holders entitled thereto.

(e) Notwithstanding the foregoing provisions of this Section 4.10, the Company shall not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.10 applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

(f) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.10, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.10 by virtue of its compliance with such securities laws or regulations.

SECTION 4.11. Limitation on Liens. Neither the Company nor any Guarantor shall, and the Company shall not permit any Restricted Subsidiary to, directly or indirectly, Incur or permit to exist any Lien of any nature whatsoever on any of its properties (including Capital Stock of a Restricted Subsidiary), whether owned at the Issue Date or thereafter acquired, other than Permitted Liens.

SECTION 4.12. Limitation on Sale/Leaseback Transactions. The Company shall not, and shall not permit any Restricted Subsidiary to, enter into any Sale/Leaseback Transaction with respect to any property unless:

(1) the Company or such Restricted Subsidiary 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 4.03, and (B) create a Lien on such property securing such Attributable Debt;

(2) the net proceeds received by the Company or any Restricted Subsidiary 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

(3) the Company applies the proceeds of such transaction in compliance with Section 4.06.

SECTION 4.13. Compliance Certificate. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Company they would normally have knowledge of any Default and whether or not the signers know of any Default that occurred during such period. If they do, the certificate shall describe the Default, its status and what action the Company is taking or proposes to take with respect thereto.

The Company shall deliver to the Trustee, as soon as possible and in any event within five Business Days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Company proposes to take with respect thereto.

SECTION 4.14. Further Instruments and Acts. Upon request of the Trustee, or as otherwise necessary, the Company shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 4.15. Changes in Covenants When Notes Rated Investment Grade.

If on any date following the date of this Indenture:

(a) The Notes are rated Baa3 or better by Moody's and BBB- or better by Standard & Poor's (or, if either such entity ceases to rate the Notes for reasons outside of the control of the Company, the equivalent investment grade credit rating from any other "nationally recognized statistical rating organization" within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Company as a replacement agency); and

(b) no Default or Event of Default shall have occurred and be continuing under this Indenture, then, beginning on that day, the following Sections in this Indenture will no longer be applicable to the Notes: 4.03, 4.04, 4.05, 4.06, 4.07, 4.12(1)(A), 4.12(3) and 5.01(3) *(provided* that those provisions of Section 4.06 hereof relating to the sale of Collateral and the application of the proceeds therefrom will remain in full force and effect).

The Company shall promptly deliver to the Trustee an Officers' Certificate certifying that the conditions set forth in this Section 4.15, relating to the inapplicability of such covenants to the Notes, have been complied with.

SECTION 4.16. Limitation on Subordinated Indebtedness.

The Company shall not Incur, and will not permit any Subsidiary Guarantor to Incur, any Indebtedness that is contractually subordinated in right of payment to any other Indebtedness of the Company or such Subsidiary Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Note Guarantees on substantially identical or more favorable terms; *provided, however*, that no Indebtedness shall be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Company solely by virtue of being unsecured or by virtue of being secured on a junior priority basis.

ARTICLE 5

Successor Company

SECTION 5.01. When Company May Merge or Transfer Assets. The Company shall not consolidate with or merge with or into, or convey, transfer, lease, assign or otherwise dispose of, in one transaction or a series of transactions, directly or indirectly, all or substantially all its assets to, any Person, unless:

(1) the resulting, surviving or transferee Person (the "*Successor Company*") shall be a Person organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and the Successor Company (if not the Company) shall expressly assume, by agreements, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Notes, this Indenture and the Security Documents;

(2) immediately after giving *pro forma* effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Company or any Subsidiary as a result of such transaction as having been Incurred by such Successor Company or such Subsidiary at the time of such transaction), no Default shall have occurred and be continuing;

(3) immediately after giving *pro forma* effect to such transaction, the Successor Company would have a Consolidated Leverage Ratio equal to or better than the Company's Consolidated Leverage Ratio immediately prior to the transaction;

(4) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture;

(5) the Successor Company promptly causes such amendments, supplements or other instruments to be executed, delivered, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens of the Security Documents on the Collateral owned by or transferred to the Successor Company, together with such financing statements as may be required to perfect any security interests in

such Collateral which may be perfected by filing of a financing statement under the Uniform Commercial Code of the relevant states;

(6) the Collateral owned by or transferred to the Successor Company shall: (A) continue to constitute Collateral under this Indenture and the Security Documents, (B) be subject to the Liens in favor of the Collateral Agent for its benefit and the benefit of the holders of the First Lien Indebtedness, and (C) not be subject to any Lien other than Permitted Liens; and

(7) the property and assets of the Person which is merged or consolidated with or into the Successor Company, to the extent that they are property or assets of the types that would constitute Collateral under the Security Documents, shall be treated as after-acquired property and the Successor Company shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the Security Documents in the manner and to the extent required in this Indenture,

provided, however, that clause (3) will not be applicable to (A) a Restricted Subsidiary consolidating with, merging into or transferring all or part of its properties and assets to the Company (so long as no Capital Stock of the Company is distributed to any Person) or (B) the Company merging with an Affiliate of the Company solely for the purpose and with the sole effect of reincorporating the Company in another jurisdiction. In addition, the Company will not, directly or indirectly, lease all or substantially all of the properties and assets of it and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to any other Person.

This Section 5.01 will not apply to a consolidation, merger, sale, assignment, transfer, conveyance or other disposition of properties or assets between or among the Company and any of its Restricted Subsidiaries.

This Section 5.01 will apply to a Company-XM Holdings Merger or a Company-XM Merger, except that for purposes of compliance with the first paragraph of this Section 5.01, clause (3) shall be replaced with the following: (3) immediately after giving *pro forma* effect to such transaction, both (A) the Successor Company would have a First-Lien Leverage Ratio equal to or less than 1.75 to 1 and (B) the Successor Company would be permitted to Incur at least $1.00 of additional Indebtedness pursuant to Section 4.03(a).

For purposes of this Section 5.01, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The Successor Company shall be the successor to the Company and shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, and the predecessor Company, except in the case of a lease, shall be released from the obligation to pay the principal of and interest on the Notes.

ARTICLE 6

Defaults and Remedies

SECTION 6.01. Events of Default. Each of the following is an "Event of Default":

(1) default in any payment of interest on any Note when the same becomes due and payable, and such default continues for a period of 30 days;

(2) (A) a default in the payment of the principal of any Note when the same becomes due and payable at its Stated Maturity, upon optional redemption, upon declaration of acceleration or otherwise, or (B) the failure by the Company to purchase Notes when required pursuant to this Indenture or the Notes;

(3) the failure by the Company to comply with Section 5.01;

(4) the failure by the Company to comply with Section 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.09, 4.10 or 4.11 (other than a failure to purchase Notes when required under Section 4.06 or 4.10) and such failure continues for 30 days after the notice specified in the second to last paragraph of this Section 6.01 below;

(5) the failure by the Company to comply with any of its agreements contained in the Notes or this Indenture (other than those referred to in clause (1), (2), (3) or (4) above (or a failure to give notice described in clause (4) above)) or the Security Documents and such failure continues for 60 days after the notice specified in the second to last paragraph of this Section 6.01 below;

(6) Indebtedness of the Company or any Significant Subsidiary (other than with respect to the Notes) is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds $25 million, or its foreign currency equivalent at the time;

(7) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Code:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property; or

(D) makes a general assignment for the benefit of its creditors;

or takes any comparable action under any foreign laws relating to insolvency;

(8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Code that:

(A) is for relief against the Company or any Significant Subsidiary in an involuntary case;

(B) appoints a Custodian of the Company or any Significant Subsidiary or for any substantial part of its property; or

(C) orders the winding up or liquidation of the Company or any Significant Subsidiary;

or any similar relief is granted under any foreign laws and the order or decree remains unstayed and in effect for 60 days;

(9) any final, nonappealable judgment or decree for the payment of money which, when taken together with all other final, nonappealable judgments or decrees for the payment of money, causes the aggregate amount of such judgments or decrees entered against the Company or any Significant Subsidiary to exceed $25 million (net of any amounts with respect to which an insurance company has acknowledged liability in writing), remains outstanding for a period of 60 consecutive days following such judgment and is not discharged, waived or stayed;

(10) any Subsidiary Guarantee of a Significant Subsidiary ceases to be in full force and effect (except as contemplated by the terms of this Indenture) or is declared null and void in a judicial proceeding or any Subsidiary Guarantor that is a Significant Subsidiary denies or disaffirms its obligations under this Indenture or its Subsidiary Guarantee;

(11) any written repudiation or disaffirmation by the Company or any Guarantor of any of its obligations under the Security Documents; or

(12) with respect to any Collateral having a fair market value in excess of $25 million, individually or in the aggregate:

(A) the security interest under the Security Documents, at any time, ceases to be in full force and effect for any reason other than in accordance with the terms of this Indenture and the Security Documents;

(B) any security interest created thereunder or under the Security Documents is declared invalid or unenforceable by a court of competent jurisdiction; or

(C) the Company or any Guarantor asserts, in any pleading in any court of competent jurisdiction, that the security interest created by the Security Documents is invalid and unenforceable.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term "Bankruptcy Code" means Title 11, United States Code, or any similar Federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Code.

A Default under clauses (4) or (5) is not an Event of Default until the Trustee or the holders of at least 25% in principal amount of the outstanding Notes notify the Company of the Default and the Company does not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default".

The Company shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officers' Certificate of any Event of Default under clause (6) and any event which with the giving of notice or the lapse of time would become an Event of Default under clause (4), (5) or (9), its status and what action the Company is taking or proposes to take with respect thereto.

SECTION 6.02. Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(7) or (8) with respect to the Company) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in principal amount of the outstanding Notes by notice to the Company and the Trustee, may declare the principal of and accrued but unpaid interest on all the Notes to be due and payable. Upon such a declaration, such principal and interest shall be due and payable immediately. In the event of a declaration of acceleration of the Notes because an Event of Default described in Section 6.01(6) with respect to other First Lien Indebtedness has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the Event of Default or payment default triggering such Event of Default pursuant to Section 6.01(6) shall be remedied or cured by the Company or a Restricted Subsidiary of the Company or waived by the holders of the relevant Indebtedness within 20 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction, (2) all existing Defaults or Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived and (3) remedies have not been taken with respect to Collateral securing such Indebtedness. If an Event of Default specified in Section 6.01(7) or (8) with respect to the Company occurs, the principal of and interest on all the Notes shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Noteholders. The Holders of a majority in principal amount of the outstanding Notes by written notice to the Trustee may rescind an acceleration and its

consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of acceleration. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

SECTION 6.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Noteholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.04. Waiver of Past Defaults. The Holders of a majority in principal amount of the Notes by written notice to the Trustee may waive an existing Default and its consequences except (a) a Default in the payment of the principal of or interest on a Note (b) a Default arising from the failure to redeem or purchase any Note when required pursuant to this Indenture or (c) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Noteholder affected. When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

SECTION 6.05. Control by Majority. The Holders of a majority in principal amount of the Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of other Noteholders or would involve the Trustee in personal liability; *provided, however,* that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.06. Limitation on Suits. Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Noteholder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) the Holder delivers to the Trustee written notice stating that an Event of Default is continuing;

(2) the Holders of at least 25% in principal amount of the Notes make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the Trustee has received an offer of security or indemnity; and

(5) the Holders of a majority in principal amount of the Notes do not give the Trustee a direction inconsistent with the request thereof during such 60-day period.

A Noteholder may not use this Indenture to prejudice the rights of another Noteholder or to obtain a preference or priority over another Noteholder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Noteholders). In the event that the Definitive Notes are not issued to any beneficial owner promptly after the Registrar has received a request from the Holder of a Global Note to issue such Definitive Notes to such beneficial owner of its nominee, the Company expressly agrees and acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to this Indenture, the right of such beneficial holder of Notes to pursue such remedy with respect to the portion of the Global Note that represents such beneficial holder's Notes as if such Definitive Notes had been issued.

SECTION 6.07. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest on the Notes held by such Holder, on or after the respective due dates expressed in the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. Collection Suit by Trustee. If an Event of Default specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.07.

SECTION 6.09. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Noteholders allowed in any judicial proceedings relative to the Company, its creditors or its property and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.07.

SECTION 6.10. Priorities. If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.07 and to the Collateral Agent for amounts due under Section 7.07 or under the Refinancing Intercreditor Agreement;

SECOND: to Noteholders for amounts due and unpaid on the Notes for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest, respectively; and

THIRD: to the Company.

The Trustee may fix a record date and payment date for any payment to Noteholders pursuant to this Section. At least 15 days before such record date, the Company shall mail to each Noteholder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant (other than the Trustee) in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in aggregate principal amount of the Notes.

SECTION 6.12. Waiver of Stay or Extension Laws. The Company (to the extent it may lawfully do so) shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 6.13. Sole Remedy for Failure to Report. Notwithstanding any other provision of this Indenture, the sole remedy for an Event of Default relating to the failure of the Company to comply with its agreements under Section 4.02(a) of this Indenture will for the 180 calendar days after the occurrence of such an Event of Default consist exclusively of the right to receive additional interest ("*Reporting Additional Interest*") on the principal amount of the Notes at a rate equal to 0.50% per annum. This Reporting Additional Interest will be payable in the same manner and on the same Interest Payment Dates and subject to the same terms as other interest payable under this Indenture. Reporting Additional Interest will accrue on all outstanding Notes from and including the date on which such Event of Default relating to a failure to comply with Section 4.02(a) first occurs to but not including the 180th calendar day thereafter (or such earlier date on which the Event of Default relating to a failure to comply with Section 4.02(a) shall have been cured or waived). On such 180th calendar day (or such earlier date on which the

Event of Default relating to a failure to comply with Section 4.02(a) shall have been cured or waived), such Reporting Additional Interest will cease to accrue and on such 180th calendar day the Notes will be subject to acceleration and other remedies as provided in this Article 6 if the Event of Default is continuing. For the avoidance of doubt, the provisions of this Section 6.13 will not affect the rights of Holders in the event of the occurrence of any other Event of Default. For the further avoidance of doubt, the Reporting Additional Interest shall not begin accruing until the Company fails to comply with Section 4.02(a) for a period of 60 calendar days after written notice of such failure is given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of outstanding Notes.

ARTICLE 7

Trustee

SECTION 7.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise of those rights and powers as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (a) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) The Trustee may refuse to perform any duty or exercise any right or power or extend or risk its own funds or otherwise incur any financial liability unless it receives indemnity reasonably satisfactory to it against any loss, liability or expense.

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

SECTION 7.02. Rights of Trustee.

(a) The Trustee may conclusively rely on and shall be protected in acting or refraining from acting upon any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through agents or attorneys and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; *provided, however,* that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution.

(g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(h) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(i) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(j) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(l) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture; and

(m) Neither the Trustee in its individual capacity, nor any of its owners, beneficiaries, agents, officers, directors, employees, affiliates, successors or assigns will, in the absence of an express agreement to the contrary, be personally liable for the payment of any amounts required to be paid under the Notes or for the agreements of the Company contained herein.

SECTION 7.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Section 7.10.

SECTION 7.04. Trustee's Disclaimer. The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee or any Authenticating Agent assumes no responsibility for their correctness. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use or application of the proceeds from the Notes, and it shall not be responsible for any statement of the Company in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication or the determination as to which beneficial owners are entitled to receive any notices hereunder.

SECTION 7.05. Notice of Defaults. If a Default occurs, is continuing and is known to the Trustee, the Trustee shall mail to each Noteholder notice of the Default within 90 days after it occurs or, if later, within 15 days after it is known to the Trustee, unless such Default has been cured or waived before the giving of such notice. Except in the case of a Default in the payment of principal of or interest on any Note (including payments pursuant to the mandatory redemption provisions of such Note, if any), the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is not opposed to the interest of the Noteholder.

SECTION 7.06. Reports by Trustee to Holders. Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, and in any event prior to July 15 in each year, the Trustee shall mail to each Noteholder a brief report dated as of such May 15.

A copy of each report at the time of its mailing to Noteholders shall be filed with the SEC and each stock exchange (if any) on which the Notes are listed. The Company agrees to promptly notify the Trustee in writing whenever the Notes become listed on any stock exchange and of any delisting thereof.

SECTION 7.07. Compensation and Indemnity. Solely for purposes of this Section 7.07, all references to "Trustee" shall also be deemed to include the Collateral Agent. The Company shall pay to the Trustee from time to time such compensation for its services as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all expenses, disbursements and advances incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts.

The Company agrees to indemnify and hold harmless the Trustee, the respective affiliates of the Trustee, any predecessor Trustee, and the respective officers, directors, employees, agents (including, without limitation each of their counsel), and controlling persons of the Trustee, and each such affiliate (each, an "*Indemnified Party*") from and against any and all claims, actions and suits whether groundless or otherwise, and from and against any and all liabilities, losses, damages and costs and expenses (including, without limitation, the reasonable fees and disbursements of counsel and with respect to the Trustee, reasonably allocated costs and expenses of in-house counsel and legal staff) of every nature and character arising out of or in

connection with any actual or threatened claim, litigation, investigation or proceeding relating to this Agreement or the Security Documents or the transactions contemplated hereby or thereby (other than any such actions or expenses resulting, as determined by a final order of a court of competent jurisdiction, from the gross negligence or willful misconduct of the Indemnified Party seeking indemnification hereunder), in each case including, without limitation, the reasonable fees and disbursements of counsel and allocated costs of in-house counsel and legal staff incurred in connection with any such claim investigation, litigation or other proceeding whether or not such Indemnified Party is a party thereto, and the Company agrees to reimburse each Indemnified Party, upon demand, for all out-of-pocket costs and expenses (including, without limitation, the reasonable fees and disbursements of counsel and with respect to the Trustee, reasonably allocated costs and expenses of in-house counsel and legal staff) incurred in connection with any of the foregoing. In litigation, or the preparation therefor, the Indemnified Parties shall each be entitled to select their own counsel and, in addition to the foregoing indemnity, the Company agrees to pay promptly the reasonable fees and expenses of such counsel. If, and to the extent that the obligations of the Company under this Section 7.07 are unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment in satisfaction of such obligations which is permissible under applicable law.

The Company shall not make any claim against any Indemnified Party for any special, indirect or consequential damages in respect of any breach or wrongful conduct (whether the claim therefor is based in contract, tort or duty imposed by law) in connection with, arising out of or in any way related to the transactions contemplated by, and the relationship established by the Security Documents, or any act, omission or event occurring in connection therewith, and hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in the Company's favor.

The covenants contained in this Section 7.07 shall survive payment or satisfaction in full of all other of the Obligations under this Indenture.

To secure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes.

The Company's payment obligations pursuant to this Section shall survive the discharge of this Indenture and the resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(7) or (8) with respect to the Company, the expenses, including the reasonable charges and expenses of its counsel, are intended to constitute expenses of administration under the Bankruptcy Code.

SECTION 7.08. Replacement of Trustee. The Trustee may resign at any time by so notifying the Company, the Paying Agent and the Holders. The Holders of a majority in principal amount of the Notes at the time outstanding may remove the Trustee by so notifying the Trustee and the Company and may appoint a successor Trustee. The Company shall remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10;

(2) the Trustee is adjudged bankrupt or insolvent;

(3) a receiver or other public officer takes charge of the Trustee or its property; or

(4) the Trustee otherwise becomes incapable of acting.

No resignation or removal of the Trustee shall be effective until a successor Trustee has been appointed. The Company may appoint a temporary trustee until the appointment of such successor Trustee. If the Trustee resigns, is removed by the Company or by the Holders of a majority in principal amount of the Notes and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Noteholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee upon the repayment of all the retiring Trustee's fees and expenses then due and payable and, subject to the lien provided for in Section 7.07.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, at the Company's expense, or the Holders of 10% in principal amount of the Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Noteholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

SECTION 7.09. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the

name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.10. Eligibility; Disqualification. The Trustee shall have a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition.

SECTION 7.11. Trustee's Application for Instructions from the Company. Any application by the Trustee for written instructions from the Company may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 8

Discharge of Indenture; Defeasance

SECTION 8.01. Discharge of Liability on Notes; Defeasance.

(a) When (1) the Company delivers to the Trustee all outstanding Notes (other than Notes replaced pursuant to Section 2.07) for cancellation or (2) all outstanding Notes have become due and payable, whether at maturity or on a redemption date as a result of the mailing of a notice of redemption pursuant to Article 3 hereof and the Company or a Subsidiary Guarantor irrevocably deposits with the Trustee funds sufficient to pay at maturity or upon redemption all outstanding Notes, including interest thereon to maturity or such redemption date (other than Notes replaced pursuant to Section 2.07), and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture and the Security Documents and related Liens shall, subject to Section 8.01(c), cease to be of further effect with respect to all the outstanding Notes. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Company.

(b) Subject to Sections 8.01(c) and 8.02, the Company at any time may terminate (1) all its obligations under the Notes and this Indenture ("*legal defeasance option*") or (2) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12 and 4.16 and the operation of Sections 6.01(4), 6.01(6), 6.01(7), 6.01(8), 6.01(9), 6.01(10), 6.01(11) and 6.01(12) (but, in the case of Sections 6.01(7) and (8), with respect only to Significant Subsidiaries) and the limitations contained in Section 5.01(3) ("*covenant defeasance*

option"). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercises its legal defeasance option, (i) payment of the Notes may not be accelerated because of an Event of Default with respect thereto and (ii) the Note Guarantees in effect at such time of exercise will terminate. If the Company exercises its covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in Sections 6.01(4), 6.01(6), 6.01(7), 6.01(8), 6.01(9), 6.01(10), 6.01(11) and 6.01(12) (but, in the case of Sections 6.01(7) and (8), with respect only to Significant Subsidiaries) or because of the failure of the Company to comply with Section 5.01(3).

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding clauses (a) and (b) above, the Company's obligations in Sections 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 7.07 and 7.08 and in this Article 8 shall survive until the Notes have been paid in full. Thereafter, the Company's obligations in Sections 7.07 and 8.05 shall survive.

SECTION 8.02. Conditions to Defeasance. The Company may exercise its legal defeasance option or its covenant defeasance option only if:

(1) the Company or a Guarantor irrevocably deposits in trust with the Trustee money or U.S. Government Obligations for the payment of principal of and interest on the Notes to redemption or maturity, as the case may be;

(2) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest, when due and without reinvestment, on the deposited U.S. Government Obligations, plus any deposited money without investment, will provide cash at such times and in such amounts as will be sufficient to pay principal and interest when due on all the Notes to maturity or redemption, as the case may be;

(3) 123 days pass after the deposit is made and during the 123-day period no Default specified in Sections 6.01(7) or (8) with respect to the Company occurs which is continuing at the end of the period;

(4) the deposit does not constitute a default under any other agreement binding on the Company;

(5) the Company delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended;

(6) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of this Indenture there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Noteholders will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(7) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Noteholders will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

(8) the Company delivers to the Trustee an Opinion of Counsel in the jurisdiction or organization of the Company (if other than the United States) to the effect that (A) Holders will not recognize income, gain or loss income tax purposes of such jurisdiction as a result of such deposit and defeasance, and will be subject to income tax of such jurisdiction on the same amounts, and in the same manner and at the same times as would have been the case if such deposit and defeasance, had not occurred; and

(9) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes as contemplated by this Article 8 have been complied with.

Before or after a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of Notes at a future date in accordance with Article 3.

SECTION 8.03. Application of Trust Money. Subject to Section 8.04, the Trustee shall hold in trust money or U.S. Government Obligations (including proceeds thereof) deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Notes.

SECTION 8.04. Repayment to Company. Each of the Trustee and the Paying Agent shall pay to the Company upon written request any excess money U.S. Government Obligations or securities held by them at any time.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal or interest with respect to the Notes that remains unclaimed for two years, and, thereafter, Noteholders entitled to the money must look to the Company for payment as general creditors, unless an applicable abandoned property law designates another person and the Trustee

and the Paying Agent shall have no further liability to the Holders with respect to such money for that period commencing after the return thereof.

SECTION 8.05. Indemnity for Government Obligations. The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.06. Reinstatement. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture, and the Notes so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 8; *provided, however,* that, if the Company has made any payment of interest on or principal of any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE 9

Amendments

SECTION 9.01. Without Consent of Holders. The Company, the Guarantors and the Trustee may amend this Indenture, the Notes, the Note Guarantees or the Security Agreements without notice to or consent of any Noteholder:

(1) to cure any ambiguity, omission, defect or inconsistency;

(2) to comply with Article 5;

(3) to provide for uncertificated Notes in addition to or in place of certificated Notes; *provided,* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code;

(4) to add Guarantees with respect to the Notes, including any Subsidiary Guarantees, or to secure the Notes;

(5) to add to the covenants of the Company or any of its Restricted Subsidiaries for the benefit of the Holders or to surrender any right or power herein conferred upon the Company or any of its Restricted Subsidiaries;

(6) to make any change that does not adversely affect the rights of any Noteholder;

(7) to add Guarantees with respect to the Notes or release a Subsidiary Guarantor upon its designation as an Unrestricted Subsidiary; *provided, however*, that the designation is in accord with the applicable provisions of this Indenture;

(8) to release a Subsidiary Guarantor from its obligations under its Subsidiary Guarantee or this Indenture in accordance with the applicable provisions of this Indenture;

(9) to conform the text of this Indenture, the Notes, the Security Documents or the Note Guarantees to any provision in the Offering Memorandum under the heading "Description of notes";

(10) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes;*provided, however,* that (a) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any other applicable securities law and (b) such amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(11) to enter into additional or supplemental Security Documents to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture as of the date of this Indenture;

(12) to release Collateral from First Lien Indebtedness when permitted by this Indenture;

(13) to evidence and provide for the acceptance by appointment of a successor Collateral Agent so long as (i) such successor Collateral Agent is reasonably acceptable to the Trustee and (ii) is otherwise qualified to serve as Collateral Agent; or

(14) to add assets to the Collateral securing First Lien Indebtedness or to amend the Security Documents to secure additional First Lien Indebtedness to the extent such obligations are permitted under this Indenture.

After an amendment under this Section becomes effective, the Company shall mail to Noteholders a notice briefly describing such amendment. The failure to give such notice to all Noteholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.02. With Consent of Holders. The Company, the Guarantors and the Trustee may amend this Indenture, the Notes, the Note Guarantees and the Security Documents with the written consent of the Holders of at least a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a tender offer or exchange offer for the Notes) and any past default or compliance with any provisions may also be waived with the consent of the Holders of at least a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a tender offer or exchange offer for

the Notes). However, without the consent of each Noteholder affected thereby, an amendment or waiver may not, among other things:

(1) reduce the amount of Notes whose Holders must consent to an amendment;

(2) reduce the rate of or extend the time for payment of interest on any Note;

(3) reduce the principal of or change the Stated Maturity of any Note;

(4) reduce the amount payable upon the redemption of any Note or change the time at which any Note may be redeemed as described in Article 3 hereto or paragraph 6 of the Notes;

(5) make any Note payable in money other than that stated in the Note;

(6) make any changes in the ranking or priority of any Note that would adversely affect the Noteholders;

(7) make any change in Section 6.04 or 6.07 or this second sentence of this Section 9.02;

(8) impair the right of any holder of the Notes to receive payment of principal of and interest on such holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's Notes; or

(9) release any Guarantor from its Guarantee under this Indenture except in accordance with this Indenture.

Additionally, any amendment, consent or waiver that would constitute a release of all or substantially all of the Collateral from the Security Documents or all or substantially all of the Note Guarantees will require the consent of not less than $66^{2}/_{3}\%$ of the Holders.

Neither the Company nor any Affiliate of the Company shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Company shall mail to Noteholders a notice briefly describing such amendment. The failure to give such

notice to all Noteholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

SECTION 9.03. Revocation and Effect of Consents and Waivers. A consent to an amendment or a waiver by a Holder of a Note shall bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Note or portion of the Note if the Trustee receives the written notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Noteholder. An amendment or waiver becomes effective upon (i) receipt by the Company or the Trustee of consents by the Holders of the requisite principal amount of securities, (ii) satisfaction of conditions to effectiveness as set forth in this Indenture and any indenture supplemental hereto containing such amendment or waiver and (iii) the execution of such amendment or waiver by the Trustee.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Noteholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Noteholders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

SECTION 9.04. Notation on or Exchange of Notes. If an amendment, supplement or waiver changes the terms of a Note, the Trustee or the Company may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Note shall issue and the Trustee shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment.

SECTION 9.05. Trustee To Sign Amendments. The Trustee shall sign any amendment, supplement or waiver to this Indenture or any Security Document authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture.

SECTION 9.06. Payment for Consent. Neither the Company nor any Affiliate of the Company shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such

consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

ARTICLE 10

Guarantee

SECTION 10.01. Guarantee.

(a) Subject to this Article 10, each of the Guarantors shall, jointly and severally, unconditionally guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

(1) the principal of, premium and interest on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Note Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(d) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Note Guarantee.

SECTION 10.02. Limitation on Guarantor Liability. Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that this Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the Obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the Obligations of such other Guarantor under this Article 10, result in the Obligations of such Guarantor under its Note Guarantee not constituting a fraudulent transfer or conveyance.

SECTION 10.03. Delivery of Note Guarantee.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Note Guarantee set forth in this Indenture or any supplemental indenture on behalf of the Guarantors. Neither the Company nor any Guarantor shall be required to make a notation on the Notes to reflect any Note Guarantee or any such release, termination or discharge thereof.

In the event that the Company or any of its Restricted Subsidiaries creates or acquires any Material Subsidiary after the date of this Indenture, if required by Section 10.06 hereof, the Company will cause such Material Subsidiary to comply with the provisions of Section 10.06 hereof and the other Sections of this Article 10, to the extent applicable.

SECTION 10.04. Guarantors May Consolidate, etc., on Certain Terms.

Except as otherwise provided in Section 10.05 hereof, no Person that becomes a Guarantor may at any time on or after the date hereof sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Company or another Guarantor, unless:

(a) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(b) either:

(1) (i) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger (the "*Successor Guarantor*") assumes all the Obligations of that Guarantor under this Indenture, the Security Documents and its Note Guarantee pursuant to agreements satisfactory to the Trustee; (ii) the Successor Guarantor causes such amendments, supplements or other instruments to be executed, delivered, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens of the Security Documents on the Collateral owned by or transferred to the Successor Guarantor, together with such financing statements as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement under the Uniform Commercial Code of the relevant states; (iii) the Collateral owned by or transferred to the Successor Guarantor shall: (A) continue to constitute Collateral under this Indenture and the Security Documents, (B) be subject to Liens in favor of the Collateral Agent for the benefit of the holders of First Lien Indebtedness and (C) not be subject to any Lien other than Permitted Liens; and (iv) the property and assets of the Person which is merged or consolidated with or into the Successor Guarantor, to the extent that they are property or assets of the types which would constitute Collateral under the Security Documents, shall be treated as after-acquired property and the Successor Guarantor shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the Security Documents in the manner and to the extent required in this Indenture; or

(2) the Net Available Cash of such sale or other disposition is applied in accordance with the applicable provisions of this Indenture, including without limitation, Section 4.06 hereof.

In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person pursuant to Section 10.04(b)(1) above, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of this Note Guarantee and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. All Note Guarantees so issued will in all respects have the same legal rank and benefit under this

Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

Except as set forth in Articles 4 and 5 hereof, and notwithstanding Section 10.04(b)(1) and (b)(2) above, nothing contained in this Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor.

The Trustee, subject to the provisions of Section 12.03 hereof, will receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption of Obligations, comply with the provisions of this Section 10.04 hereof. Such certificate and opinion will comply with the provisions of Section 12.04.

SECTION 10.05. Releases.

(a) In the event of any sale or other disposition of all or substantially all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all of the Capital Stock of any Guarantor, in each case to a Person that is not (either before or after giving effect to such transactions) the Company or a Restricted Subsidiary of the Company, then such Guarantor (in the event of a sale or other disposition, by way of merger, consolidation or otherwise, of all of the Capital Stock of such 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 such Guarantor) will be released and relieved of any obligations under its Note Guarantee; *provided* that the Net Available Cash of such sale or other disposition is applied in accordance with the applicable provisions of this Indenture, including without limitation Section 4.06 hereof. Upon delivery by the Company to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Company in accordance with the provisions of this Indenture, including without limitation Section 4.06 hereof, the Trustee will execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

(b) Upon designation of any Guarantor as an Unrestricted Subsidiary in accordance with the terms of this Indenture, such Guarantor will be released and relieved of any obligations under its Note Guarantee.

(c) If the legal defeasance option is exercised or this Indenture is otherwise discharged in accordance with Article 8 hereof, each Guarantor will be released and relieved of any obligations under its Note Guarantee.

Any Guarantor not released from its obligations under its Note Guarantee as provided in this Section 10.05 will remain liable for the full amount of principal of and interest and premium, if any, on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 10.

SECTION 10.06. Addition of Guarantors.

(a) At any time on or after the Issue Date, (i) the Company shall cause any Person that becomes a Material Subsidiary of the Company to and (ii) any successors or assigns the Company or any other Guarantor, including in connection with a Company-XM Merger or a Company-XM Holdings Merger shall (A) reasonably promptly become a Guarantor hereunder as set forth in Section 10.06(b) below and (B) execute and deliver to the Trustee and the Collateral Agent joinders to the Security Documents and/or additional Security Documents and effect all filings and other actions required by applicable law necessary to or reasonably requested by the Collateral Agent to grant a valid and perfected security interest in the Collateral with respect to such new Material Subsidiary; *provided, however*, that if any such new Material Subsidiary is an FCC License Subsidiary, it shall become a Subsidiary Guarantor hereunder only to the extent permitted under applicable law, rules or regulations, including rules and regulations of the Federal Communications Commission.

(b) If any Guarantor that is not a Subsidiary of the Company or the Company is required to cause a Subsidiary to become a Guarantor pursuant to Section 10.06(a), such Guarantor that is not a Subsidiary of the Company or the Company will cause such Subsidiary to (1) execute and deliver to the Trustee a supplemental indenture substantially in the form of Exhibit 2 hereto pursuant to which such Subsidiary will unconditionally Guarantee all of the Company's Obligations under the Notes on the terms set forth in this Indenture and (2) deliver to the Trustee an Opinion of Counsel reasonably satisfactory to the Trustee that such supplemental indenture has been duly executed and delivered by such Subsidiary; *provided however*, that if such new Material Subsidiary is an FCC License Subsidiary, the supplemental indenture shall state that the FCC License Subsidiary shall Guarantee all of the Company's Obligations under the Notes on the terms set forth in this Indenture only to the extent permitted under applicable law, rules or regulations, including rules and regulations of the Federal Communications Commission.

ARTICLE 11

Security Documents

SECTION 11.01. Security Documents.

(a) The due and punctual payment of the aggregate principal amount of, premium, indemnifications, reimbursements, and interest on the Notes when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of and interest (to the extent permitted by law) on the Notes and performance of all other obligations of the Company and the Guarantors to the Holders, the Trustee or the Collateral Agent under this Indenture shall be secured by Liens and security interests as provided in the Security Documents which the Company and the Guarantors, as the case may be, have entered into. The Company and the Guarantors hereby agree that the Collateral Agent shall hold the Collateral in trust for the benefit of the Holders and the Trustee, in each case pursuant to the terms of the Security Documents. Each Holder of Notes, by its acceptance thereof (and the Company, with respect to clauses (iv),

(v) and (vi) below, by its execution hereof) (i) consents and agrees to the terms of the Security Documents and all other agreements, certificates, documents and instruments relating thereto (including, without limitation, the provisions providing for foreclosure and release of Collateral) as the same may be in effect or may be amended from time to time in accordance with their terms (ii) authorizes and directs the Trustee and the Collateral Agent to enter into the Security Documents and any documentation relating thereto, and to perform its obligations and exercise its rights thereunder in accordance therewith, (iii) appoints and authorizes the Trustee to give and receive notices on its behalf for all purposes under the Intercreditor Agreement, if any, (iv) authorizes and directs the Trustee and the Collateral Agent to enter into the Refinancing Intercreditor Agreement and any documentation related thereto, in each case, in accordance with the terms of the Sirius Collateral Agreement, (v) authorizes and directs the Trustee and the Collateral Agent to enter into, on the Company-XM Merger Date, the XM Security Documents and XM Intercreditor Agreement as in effect on such date and any documentation related thereto, and (vi) authorizes and directs the Trustee and the Collateral Agent to enter into such additional security documents and any documentation necessary or desirable to effectuate the grant to the Trustee and the Collateral Agent of a security interest in additional Collateral following the Refinancing of the Existing Credit Agreement Indebtedness or the addition of First Lien Indebtedness as Additional Secured Obligations under (and as defined in) the applicable Security Agreement.

(b) The Company and each of the Guarantors shall deliver to the Trustee copies of all documents delivered to the Collateral Agent pursuant to the Security Documents and shall do or cause to be done all such acts and things as may be required by the provisions of the Security Documents to assure and confirm to the Trustee and the Collateral Agent the security interest in the Collateral contemplated hereby and by the Security Documents, or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. The Company and the Guarantors shall take, or shall cause each of their respective Subsidiaries to take, upon request of the Trustee, any and all actions required under the Security Documents to create and maintain, as security for the Obligations of the Company and the Guarantors hereunder, a valid and enforceable perfected first priority Lien, subject to Permitted Liens in respect of other First Lien Indebtedness permitted hereunder and Permitted Liens which are non-consensual and arise by operation of law, in and on all the Collateral, in favor of the Collateral Agent for the benefit of the Holders and the holders of such other First Lien Indebtedness, superior to and prior to the rights of all third Persons and subject to no Liens other than Permitted Liens.

(c) Any (1) Person that is a Material Subsidiary of the Company, and any of their successors or assigns, including pursuant to any Company-XM Holdings Merger or Company-XM Merger (unless all of such Person's assets constitute Excluded Collateral (under and as defined in the applicable XM Security Documents)) and (2) successors or assigns of the Company or any other Guarantor, including in connection with any Company-XM Holdings Merger or Company-XM Merger, in each case, shall become Guarantors in accordance with the terms of Section 10.06 and grant Liens on their assets to the Collateral Agent, for the benefit of the Holders of the Notes and of any other First Lien Indebtedness (to the extent such First Lien

Indebtedness is permitted to be incurred by this Indenture). The Company will, and will cause each of the Guarantors to, do or cause to be done, all acts and things to reasonably assure and confirm that the Collateral Agent holds, for the benefit of the Holders of the Notes and any other First Lien Indebtedness duly created enforceable and first-priority perfected Liens, subject to Permitted Liens in respect of other First Lien Indebtedness permitted hereunder and Permitted Liens which are non-consensual and arise by operation of law, upon the Collateral including, without limitation, causing the holders of any future First Lien Indebtedness (or their designated agents) to become a party to the Security Documents and Intercreditor Agreement then in effect, if applicable.

(d) On the Company-XM Merger Date, any successor or assign of the Company or any other Guarantor shall (a) comply with the requirements of the applicable Security Agreement, in order to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, as contemplated by this Indenture and the Security Documents, upon the Collateral Agent for the benefit of the Holders of the Notes and the Trustee and (b) take such other actions as may be reasonably requested by the Collateral Agent in order to carry out and give full effect to the intents and purposes of the Security Documents.

(e) On or prior to the date of any Refinancing of the Existing Credit Agreement Indebtedness or the addition of First Lien Indebtedness as Additional Secured Obligations under (and as defined in) the applicable Security Agreement then in effect, the Company and each Guarantor shall (i) enter into such documentation to the extent required by law or as the Collateral Agent shall reasonably request pursuant to which the Grantors shall grant to the Collateral Agent, for the ratable benefit of the Secured Parties (as defined in the applicable Security Agreement), a security interest in any assets or property of the Company and such Guarantors not otherwise granted pursuant to the applicable Security Agreement or any other Security Document prior to such date, to the extent the Company and such Guarantors grant a security interest in such other assets to any Additional Secured Debtholders (as defined in the applicable Security Agreement), and which documentation shall contain such additional customary covenants, representations, conditions (including the delivery of legal opinions) and other provisions relating to such additional assets or the granting of such security interest, in each case, as the Collateral Agent may reasonably request, and in each case, as further set forth herein or in the applicable Security Documents and (ii) shall take such additional actions as are required by the applicable Security Documents.

(f) On the Company-XM Merger Date, the Company and the Guarantors shall (a) execute and deliver to the Collateral Agent, and the Collateral Agent shall become a party to, the XM Security Documents then in effect on terms reasonably acceptable to the Collateral Agent, (b) deliver to the Collateral Agent customary lien searches and (c) execute and deliver all other opinions, documents and instruments, required by law or reasonably requested by the Collateral Agent to be filed, registered, recorded, delivered, executed or possessed in order to create a first-priority perfected lien on the Collateral (subject to Liens which are permitted hereunder to rank equal or prior to the Liens securing the Obligations hereunder). At any time on or after the Company-XM Merger Date, the Company will, and the Trustee and the Collateral Agent will have the right but not the obligation, file such financing statements and amendments

and continuations thereof and take such other actions as may be required or as it deems reasonably necessary to ensure that, as of the date of such Company-XM Merger, the Liens created by the XM Security Documents for the benefit of the holders of the Notes have the same priority as they would have had, had they been executed, and filings in respect thereof had been made, on the date hereof.

(g) The Company and the Guarantors shall do or cause to be done all acts and things that may be required from time to time, or that the Collateral Agent from time to time may reasonably request, to assure and confirm that the Collateral Agent holds, for the benefit of the Noteholders, duly created and enforceable and perfected Liens upon the Collateral, (including any property or assets that are acquired or otherwise become Collateral after the date hereof (the "*After Acquired Property*"), in each case as contemplated by, and with the Lien priority required under, the Security Documents. Upon the reasonable request of the Collateral Agent or any Noteholder at any time and from time to time, the Company and the Guarantors will promptly execute, acknowledge and deliver such security documents, mortgages, deeds of trust, instruments, certificates, notices and other documents (together, the "*After Acquired Property Documents*"), and take such other actions as may be reasonably required, or that the Collateral Agent may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by the Security Documents for the benefit of the Noteholders (it being expressly agreed that the Collateral Agent has no responsibility to monitor, protect or perfect any such Liens or benefits).

SECTION 11.02. Recording and Opinions.

(a) The Company shall furnish to the Trustee simultaneously with the execution and delivery of this Indenture an Opinion of Counsel either (i) stating that, in the opinion of such counsel, all action has been taken with respect to the recording, registering and filing of this Indenture, financing statements or other instruments as is necessary to make effective the Liens intended to be created by the applicable Security Agreement and to perfect the Liens (to the extent perfection is required under the applicable Security Agreement and possible by filing in the jurisdiction of organization), and reciting with respect to the security interests in the Collateral, the details of such action, or (ii) stating that, in the opinion of such counsel, no such action is necessary to make such Liens effective or perfected, in each case, subject to customary assumptions and exclusions.

(b) On the Company-XM Merger Date, the Company shall furnish to the Trustee and the Collateral Agent simultaneously with the execution and delivery of the XM Security Documents as in effect at such time an Opinion of Counsel either (i) stating that, in the opinion of such counsel, all action has been taken with respect to the recording, registering and filing of this Indenture, the XM Security Documents as in effect at such time, financing statements or other instruments as is necessary to make effective the Liens intended to be created by the XM Security Documents as in effect at such time and to perfect the Liens (to the extent perfection is required under the XM Security Documents as in effect at such time and possible by filing in the jurisdiction of organization), and reciting with respect to the security interests in the Collateral, the details of such action, or (ii) stating that, in the opinion of such counsel, no such

action is necessary to make such Liens effective or perfected, in each case, subject to customary assumptions and exclusions.

(c) On the date of any Refinancing of the Existing Credit Agreement Indebtedness or the addition of First Lien Indebtedness as Additional Secured Obligations under (and as defined in) the applicable Security Agreement then in effect and the grant by the Company or any Guarantor of a security interest in additional Collateral as further set forth in Section 11.01 hereof or in the applicable Security Agreement, the Company shall deliver to the Trustee and the Collateral Agent an Opinion of Counsel, either (i) stating that, in the opinion of such counsel, all action has been taken with respect to the recording, registering and filing of financing statements or other instruments as is necessary to make effective the Liens intended to be created by such documents and to perfect the Liens (to the extent perfection is required under the applicable Security Agreement and possible by filing in the jurisdiction of organization), and reciting with respect to the security interests in the Collateral, the details of such action, or (ii) stating that, in the opinion of such counsel, no such action is necessary to make such Liens effective or perfected, in each case, subject to customary assumptions and exclusions.

(d) Within 90 days of the purchase by the Company or the Guarantors of any After Acquired Property constituting owned real property, the Company shall furnish to the Trustee and the Collateral Agent simultaneously with the execution and delivery of the After Acquired Property Documents (i) an Opinion of Counsel stating that, in the opinion of such counsel, all action has been taken with respect to the recording, registering and filing of such After Acquired Property Documents, financing statements or other instruments as is necessary to make effective the Liens intended to be created by such After Acquired Property Documents as in effect at such time and to perfect the Liens and reciting with respect to the security interests in such Collateral, the details of such action; (ii) a title insurance policy with extended coverage covering the After Acquired Property as well as a current ALTA survey thereof, together with a surveyor's certificate unless the title insurance policy referred to above shall not contain an exception for any matter shown by a survey (except to the extent an existing survey has been provided and specifically incorporated into such title insurance policy), each in form and substance reasonably satisfactory to the Collateral Agent; (iii) any consents or estoppels reasonably deemed necessary by the Collateral Agent in connection with any mortgage or other applicable Security Document and reasonably obtainable by the Company or the Guarantors, each of the foregoing in form and substance reasonably satisfactory to the Collateral Agent.

SECTION 11.03. Release of Collateral.

(a) Collateral may be released only in accordance with the terms of the Security Agreement, and the Intercreditor Agreement, as applicable.

(b) At any time when a Default or Event of Default shall have occurred and be continuing and the maturity of the Notes shall have been accelerated (whether by declaration or otherwise) and the Trustee shall have delivered a notice of acceleration to the Collateral Agent,

no release of Collateral pursuant to the provisions of the Security Agreement, or the Intercreditor Agreement, as applicable, shall be effective as against the Holders.

(c) The release of any Collateral from the terms of this Indenture and the Security Agreement and Intercreditor Agreement, as applicable, shall not be deemed to impair the security under this Indenture and the Liens in favor of the Collateral Agent on the remaining Collateral in contravention of the provisions hereof if and to the extent the Collateral is released pursuant to the terms of the applicable Security Documents.

(d) At any time that the Company or a Subsidiary Guarantor may incur a Lien in accordance with this Indenture, and furnishes the Trustee with an Officers' Certificate stating that such incurrence complies with the terms of this Indenture, the Trustee shall deliver a certificate to the Collateral Agent setting forth such determination.

SECTION 11.04. Certificates of the Company. The Company shall furnish to the Trustee and the Collateral Agent, prior to each proposed release of Collateral pursuant to the applicable Security Documents, an Officers Certificate and, at the request of the Trustee or Collateral Agent, an Opinion of Counsel, which may be rendered by internal counsel to the Company, to the effect that such accompanying documents constitute all documents required by this Indenture and the applicable Security Documents. The Trustee may, to the extent permitted by Sections 7.01 and 7.02 hereof, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such documents.

SECTION 11.05. Certificates of the Trustee. In the event that the Company wishes to obtain the Trustee's acknowledgement of a release Collateral in accordance with the applicable Security Documents and has delivered the certificates and documents required by the applicable Security Documents and Sections 10.03 and 10.04 hereof, the Trustee shall determine whether it has received all documentation required by this Indenture and the applicable Security Documents in connection with such release and, based on such determination, shall deliver a certificate to the Collateral Agent setting forth such determination.

SECTION 11.06. Authorization of Actions to Be Taken by the Trustee Under the Security Agreements and the Intercreditor Agreements. Subject to the provisions of Section 7.01 and 7.02 hereof, the Trustee may, in its sole discretion and without the consent of the Holders, direct, on behalf of the Holders, the Collateral Agent to take all actions it deems necessary or appropriate in order to (a) enforce any of the terms of the Security Documents, and (b) collect and receive any and all amounts payable in respect of the Obligations of the Company or any Guarantor hereunder. The Trustee shall have power to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of the Security Documents and such suits and proceedings as the Trustee may deem expedient to preserve or protect its interests and the interests of the Holders in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders or of the Trustee).

Any action taken by the Trustee under any applicable Intercreditor Agreement with the vote or consent of the Holders of at least a majority in aggregate principal amount of the Notes (including Additional Notes, if any) shall constitute an action taken on behalf of all Holders for purposes of determining the Required Secured Parties (as defined in the applicable Collateral Agreement) or otherwise calculating the amount of indebtedness approving or consenting to a particular matter under such Intercreditor Agreement.

SECTION 11.07. Authorization of Receipt of Funds by the Trustee Under the Security Agreements. The Trustee is authorized to receive any funds for the benefit of the Holders distributed under the Security Documents and to make further distributions of such funds to the Holders according to the provisions of this Indenture.

SECTION 11.08. Termination of Security Interest. Upon the payment in full of all Obligations of the Company under this Indenture and the Notes, or upon legal defeasance in accordance with Article 8, the Trustee shall, at the request of the Company, deliver a certificate to the Collateral Agent stating that such Obligations have been paid in full, and instruct the Collateral Agent to release the rights and interests of the Trustee and the Holders with respect to the Liens pursuant to this Indenture and the Security Agreement.

ARTICLE 12

Miscellaneous

SECTION 12.01. Notices. Any notice or communication shall be in writing (which may be by facsimile) and delivered in person or mailed by first-class mail addressed as follows:

if to the Company:

Sirius XM Radio Inc.
1221 Avenue of the Americas, 36th Floor
New York, NY 10020
Attention: General Counsel

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Gary Sellers, Esq.

if to the Trustee:

U.S. Bank Corporate Trust Services
100 Wall Street, Suite 1600
New York, NY 10005

Attention: Thomas E. Tabor

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Noteholder shall be mailed to the Noteholder at the Noteholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

SECTION 12.02. Communication by Holders with Other Holders. Noteholders may communicate with other Noteholders with respect to their rights under this Indenture or the Notes.

SECTION 12.03. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee, if requested by the Trustee:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 12.04. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that the individual making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with; *provided, however,* that with respect to

matters of fact, an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

SECTION 12.05. When Notes Disregarded. In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Also, subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

SECTION 12.06. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Noteholders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 12.07. Legal Holidays. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on any amount that would have been otherwise payable on such payment date if it were not a legal holiday for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 12.08. Governing Law, Submission to Jurisdiction. This Indenture and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company submits to the non-exclusive jurisdiction of the courts of the State of New York and the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York over any suit, action or proceeding arising under or in connection with this Indenture or the transactions contemplated hereby or the Notes or the Note Guarantees. The Company waives, to the fullest extent permitted by applicable law, any objection that it may have to the venue of any suit, action or proceeding arising under or in connection with this Indenture or the transactions contemplated hereby or the Notes or the Note Guarantees in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York, or that such suit, action or proceeding brought in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York, was brought in an inconvenient court and agrees not to plead or claim the same.

SECTION 12.09. No Recourse Against Others. No director, officer, employee or stockholder, as such, of the Company, any of its Restricted Subsidiaries or any Guarantor shall have any liability for any obligations of the Company, any of its Restricted Subsidiaries or any Guarantor under the Notes or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Noteholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Notes.

SECTION 12.10. Successors. All agreements of the Company in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 12.11. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

SECTION 12.12. Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 12.13. Waiver of Jury Trial. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 12.14. Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

SIRIUS XM RADIO INC.

By: /s/ PATRICK L. DONNELLY
Name: Patrick L. Donnelly
Title: Executive Vice President, General Counsel and Secretary

SATELLITE CD RADIO, INC.

By: /s/ PATRICK L. DONNELLY
Name: Patrick L. Donnelly
Title: Secretary

SIRIUS ASSET MANAGEMENT COMPANY LLC

By: /s/ PATRICK L. DONNELLY
Name: Patrick L. Donnelly
Title: Secretary

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

U.S. BANK NATIONAL ASSOCIATION

By: /s/ JEAN CLARKE
Name: Jean Clarke
Title: Assistant Vice President

RULE 144A/REGULATION S/IAI APPENDIX
PROVISIONS RELATING TO THE NOTES,

1. Definitions.

1.1 Definitions.

For the purposes of this Appendix the following terms shall have the meanings indicated below:

"Definitive Note" means a certificated Note bearing, if required, the appropriate restricted securities legend set forth in Section 2.3(d).

"Depository" means The Depository Trust Company, its nominees and their respective successors.

"Distribution Compliance Period", with respect to any Notes, means the period of 40 consecutive days beginning on and including the later of (i) the day on which such Notes are first offered to Persons other than distributors (as defined in Regulation S under the Securities Act) in reliance on Regulation S and (ii) the issue date with respect to such Notes.

"IAI" means an institutional "accredited investor", as defined in Rule 501(a)(1), (2), (3) and (7) of Regulation D under the Securities Act.

"Initial Purchasers" means (1) with respect to the Notes issued on the Issue Date, J.P. Morgan Securities Inc., UBS Securities LLC and Morgan Stanley & Co. Incorporated, and (2) with respect to each issuance of Additional Notes, the Persons purchasing such Additional Notes under the related Purchase Agreement.

"Notes" means the 9.75% Senior Secured Notes due 2015.

"Notes Custodian" means the custodian with respect to a Global Note (as appointed by the Depository), or any successor Person thereto and shall initially be the Trustee.

"Purchase Agreement" means (1) with respect to the Notes issued on the Issue Date, the Purchase Agreement dated August 13, 2009, among the Company and the Initial Purchasers, and (2) with respect to each issuance of Additional Notes, the purchase agreement or underwriting agreement among the Company and the Person(s) purchasing such Additional Notes.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Rule 144A Notes" means all Notes offered and sold to QIBs in reliance on Rule 144A.

"Securities Act" means the Securities Act of 1933.

"Transfer Restricted Notes" means Notes that bear or are required to bear the legend relating to restrictions on transfer relating to the Securities Act set forth in Section 2.3(d) hereto.

1.2. Other Definitions

Term	Defined In Section:
"Agent Members"	2.1(b)
"Global Notes"	2.1(a)
"IAI Global Note"	2.1(a)
"Regulation S"	2.1(a)
"Regulation S Global Note"	2.1(a)
"Rule 144A"	2.1(a)
"Rule 144A Global Note"	2.1(a)

2. The Notes.

2.1 (a) Form and Dating. The Notes will be offered and sold by the Company pursuant to a Purchase Agreement. The Notes will be resold initially only to (i) QIBs in reliance on Rule 144A under the Securities Act ("Rule 144A") and (ii) Persons other than U.S. Persons (as defined in Regulation S) in reliance on Regulation S under the Securities Act ("Regulation S"). The Notes may thereafter be transferred to, among others, QIBs, IAIs and purchasers in reliance on Regulation S, subject to the restrictions on transfer set forth herein. The (A) Notes initially resold pursuant to Rule 144A shall be issued initially in the form of one or more permanent global Notes in definitive, fully registered form (collectively, the "Rule 144A Global Note"); (B) Notes initially resold to IAIs shall be issued initially in the form of one or more permanent global Notes in definitive, fully registered form (collectively, the "IAI Global Note"); and (C) Notes initially resold pursuant to Regulation S shall be issued initially in the form of one or more Regulation S global notes in registered, global form (collectively, the "Regulation S Global Note"), and in each of cases (A), (B) and (C) without interest coupons and with the global securities legend and the applicable restricted securities legends set forth in Exhibit 1 hereto, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Notes Custodian and registered in the name of the Depository or a nominee of the Depository, duly executed by the Company and authenticated by the Trustee as provided in this Indenture. Except as set forth in this Section 2.1(a), beneficial ownership interests in the Regulation S Global Note will not be exchangeable for interests in the Rule 144A Global Note, the IAI Global Note, or any other Note prior to the expiration of the Distribution Compliance Period and then, after the expiration of the Distribution Compliance Period, may be exchanged for interests in a Rule 144A Global Note or an IAI Global Note only upon certification in form reasonably satisfactory to the Trustee that (i) beneficial ownership interests in such Regulation S Global Note are owned either by non-U.S. persons or U.S. persons who purchased such interests in a transaction that did not require registration under the Securities Act and (ii) in the case of an exchange for an IAI Global Note, certification that the interest in the Regulation S Global Note is being transferred to an institutional "accredited investor" under the Securities Act that is an

institutional accredited investor acquiring the securities for its own account or for the account of an institutional accredited investor.

Beneficial interests in Regulation S Global Notes or IAI Global Notes may be exchanged for interests in Rule 144A Global Notes if (1) such exchange occurs in connection with a transfer of Notes in compliance with Rule 144A and (2) the transferor of the beneficial interest in the Regulation S Global Note or the IAI Global Note, as applicable, first delivers to the Trustee a written certificate (in a form satisfactory to the Trustee) to the effect that the beneficial interest in the Regulation S Global Note or the IAI Global Note, as applicable, is being transferred to a Person (a) who the transferor reasonably believes to be a QIB, (b) purchasing for its own account or the account of a QIB in a transaction meeting the requirements of Rule 144A, and (c) in accordance with all applicable securities laws of the States of the United States and other jurisdictions.

Beneficial interests in Regulation S Global Notes and Rule 144A Global Notes may be exchanged for an interest in IAI Global Notes if (1) such exchange occurs in connection with a transfer of the securities in compliance with an exemption under the Securities Act and (2) the transferor of the Regulation S Global Note or Rule 144A Global Note, as applicable, first delivers to the Trustee a written certificate (substantially in the form of Exhibit 2) to the effect that (A) the Regulation S Global Note or Rule 144A Global Note, as applicable, is being transferred (a) to an "accredited investor" within the meaning of 501(a)(1), (2), (3) and (7) under the Securities Act that is an institutional investor acquiring the securities for its own account or for the account of such an institutional accredited investor, in each case in a minimum principal amount of the securities of $250,000, for investment purposes and not with a view to or for offer or sale in connection with any distribution in violation of the Securities Act and (B) in accordance with all applicable securities laws of the States of the United States and other jurisdictions.

Beneficial interests in a Rule 144A Global Note or an IAI Global Note may be transferred to a Person who takes delivery in the form of an interest in a Regulation S Global Note, whether before or after the expiration of the Distribution Compliance Period, only if the transferor first delivers to the Trustee a written certificate (in the form provided in this Indenture) to the effect that such transfer is being made in accordance with Rule 903 or 904 of Regulation S or Rule 144 (as applicable) and that, if such transfer occurs prior to the expiration of the Distribution Compliance Period, the interest transferred will be held immediately thereafter through Euroclear or Clearstream.

The Rule 144A Global Note, the IAI Global Note or and the Regulation S Global Note are collectively referred to herein as "Global Notes". The aggregate principal amount of the Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee as hereinafter provided.

(b) Book-Entry Provisions. This Section 2.1(b) shall apply only to a Global Note deposited with or on behalf of the Depository.

The Company shall execute and the Trustee shall, in accordance with this Section 2.1(b) and Section 2.2, authenticate and deliver initially one or more Global Notes that (a) shall be registered in the name of the Depository for such Global Note or Global Notes or the nominee of such Depository and (b) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instructions or held by the Trustee as custodian for the Depository.

Members of, or participants in, the Depository ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depository or by the Trustee as the custodian of the Depository or under such Global Note, and the Company, the Trustee and any agent of the Company or the Trustee shall be entitled to treat the Depository as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices of such Depository governing the exercise of the rights of a holder of a beneficial interest in any Global Note.

(c) Definitive Notes. Except as provided in this Section 2.1 or Section 2.3 or 2.4, owners of beneficial interests in Global Notes shall not be entitled to receive physical delivery of Definitive Notes.

2.2 Authentication. The Trustee shall authenticate and deliver: (1) on the Issue Date, 9.75% Senior Secured Notes due 2015 with an aggregate principal amount of $257,000,000 and (2) any Additional Notes for an original issue in an aggregate principal amount specified in the written order of the Company pursuant to Section 2.02 of this Indenture, in each case upon a written order of the Company signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company. Such order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated.

2.3 Transfer and Exchange. (a) Transfer and Exchange of Definitive Notes. When Definitive Notes are presented to the Registrar with a request:

(i) to register the transfer of such Definitive Notes; or

(ii) to exchange such Definitive Notes for an equal principal amount of Definitive Notes of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided, however,* that the Definitive Notes surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or its attorney duly authorized in writing; and

(2) if such Definitive Notes are required to bear a restricted securities legend, they are being transferred or exchanged pursuant to an effective registration statement under the Securities Act, pursuant to Section 2.3(b) or pursuant to clause (A), (B) or (C) below, and are accompanied by the following additional information and documents, as applicable:

(A) if such Definitive Notes are being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, a written certification from such Holder to that effect; or

(B) if such Definitive Notes are being transferred to the Company, a written certification to that effect; or

(C) if such Definitive Notes are being transferred (x) pursuant to an exemption from registration in accordance with Rule 144A, Regulation S or Rule 144 under the Securities Act; or (y) in reliance upon another exemption from the requirements of the Securities Act: (i) a written certification to that effect (in the form set forth on the reverse of the Note) and (ii) if the Company so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in Section 2.3(d)(i).

(b) Restrictions on Transfer of a Definitive Note for a Beneficial Interest in a Global Note A Definitive Note may not be exchanged for a beneficial interest in a Rule 144A Global Note, an IAI Global Note or a Regulation S Global Note except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a Definitive Note, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with:

(i) certification, in the form set forth on the reverse of the Note, that such Definitive Note is either (A) being transferred to a QIB in accordance with Rule 144A, (B) being transferred to an IAI or (C) being transferred after expiration of the Distribution Compliance Period by a Person who initially purchased such Note in reliance on Regulation S to a buyer who elects to hold its interest in such Note in the form of a beneficial interest in the Regulation S Global Note; and

(ii) written instructions directing the Trustee to make, or to direct the Notes Custodian to make, an adjustment on its books and records with respect to such Rule 144A Global Note (in the case of a transfer pursuant to clause (b)(i)(A)), IAI Global Note (in the case of a transfer pursuant to clause (b)(1)(B)) or Regulation S Global Note (in the case of a transfer pursuant to clause (b)(i)(C)) to reflect an increase in the aggregate principal amount of the Notes represented by the Rule 144A Global Note, IAI Global Note or Regulation S Global Note, as applicable, such instructions to contain information regarding the Depository account to be credited with such increase,

(iii) then the Trustee shall cancel such Definitive Note and cause, or direct the Notes Custodian to cause, in accordance with the standing instructions and procedures existing between the Depository and the Notes Custodian, the aggregate principal amount of Notes represented by the Rule 144A Global Note, IAI Global Note or Regulation S Global Note, as applicable, to be increased by the aggregate principal amount of the Definitive Note to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Rule 144A Global Note, IAI Global Note or Regulation S Global Note, as applicable, equal to the principal amount of the Definitive Note so canceled. If no Rule 144A Global Notes, IAI Global Notes or Regulation S Global Notes, as applicable, are then outstanding, the Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of an Officers' Certificate of the Company, a new Rule 144A Global Note, IAI Global Note or Regulation S Global Note, as applicable, in the appropriate principal amount.

(c) Transfer and Exchange of Global Notes. (i) The transfer and exchange of Global Notes or beneficial interests therein shall be effected through the Depository, in accordance with this Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depository therefor. A transferor of a beneficial interest in a Global Note shall deliver to the Registrar a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository to be credited with a beneficial interest in the Global Note. The Registrar shall, in accordance with such instructions instruct the Depository to credit to the account of the Person specified in such instructions a beneficial interest in the Global Note and to debit the account of the Person making the transfer the beneficial interest in the Global Note being transferred.

(ii) If the proposed transfer is a transfer of a beneficial interest in one Global Note to a beneficial interest in another Global Note, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Note to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the Global Note from which such interest is being transferred.

(iii) Notwithstanding any other provisions of this Appendix (other than the provisions set forth in Section 2.4), a Global Note may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

(iv) In the event that a Global Note is exchanged for Definitive Notes pursuant to Section 2.4 of this Appendix, such Notes may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this Section 2.3 (including the certification requirements set forth on

the reverse of the Notes intended to ensure that such transfers comply with Rule 144A, Regulation S or another applicable exemption under the Securities Act, as the case may be) and such other procedures as may from time to time be adopted by the Company.

(d) Legend. (i) Except as permitted by the following paragraphs (ii), (iii) and (iv), each Note certificate evidencing the Global Notes (and all Notes issued in exchange therefor or in substitution thereof), in the case of Notes offered otherwise than in reliance on Regulation S shall bear a legend in substantially the following form:

THE SECURITY (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THE SECURITY EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) SUCH SECURITY MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS [IN THE CASE OF RULE 144A NOTES: ONE YEAR] [IN THE CASE OF REGULATION S NOTES: 40 DAYS] AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (1) (a) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE UNDER RULE 144A, TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (b) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (c) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144 UNDER THE SECURITIES ACT, (d) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501 (a) (1), (2), (3) OR (7) OF THE SECURITIES ACT (AN "INSTITUTIONAL ACCREDITED INVESTOR")) THAT, PRIOR TO SUCH TRANSFER, FURNISHES THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS (THE FORM OF WHICH CAN BE OBTAINED FROM THE TRUSTEE) AND, IF SUCH TRANSFER IS IN RESPECT OF AN AGGREGATE PRINCIPAL AMOUNT OF NOTES LESS THAN $250,000, AN OPINION OF COUNSEL ACCEPTABLE TO SIRIUS XM RADIO INC. THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT OR (e) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF SIRIUS XM RADIO INC. SO

REQUESTS), (2) TO SIRIUS XM RADIO INC. OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER FROM IT OF THE SECURITY EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN (A) ABOVE.

Each Definitive Note shall also bear the following additional legend:

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

(ii) Upon any sale or transfer of a Transfer Restricted Note (including any Transfer Restricted Note represented by a Global Note) pursuant to Rule 144 under the Securities Act, the Registrar shall permit the transferee thereof to exchange such Transfer Restricted Note for a certificated Note that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Note, if the transferor thereof certifies in writing to the Registrar that such sale or transfer was made in reliance on Rule 144 (such certification to be in the form set forth on the reverse of the Note).

(e) Cancellation or Adjustment of Global Note. At such time as all beneficial interests in a Global Note have either been exchanged for Definitive Notes, redeemed, purchased or canceled, such Global Note shall be returned to the Depository for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for certificated Notes, redeemed, purchased or canceled, the principal amount of Notes represented by such Global Note shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Notes Custodian for such Global Note) with respect to such Global Note, by the Trustee or the Notes Custodian, to reflect such reduction.

(f) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in the Depository or other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made

only to or upon the order of the registered Holders (which shall be the Depository or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may conclusively rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depository participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Definitive Notes.

(a) A Global Note deposited with the Depository or with the Trustee as Notes Custodian for the Depository pursuant to Section 2.1 shall be transferred to the beneficial owners thereof in the form of Definitive Notes in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, only if such transfer complies with Section 2.3 hereof and (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for such Global Note and the Depository fails to appoint a successor depository or if at any time such Depository ceases to be a "clearing agency" registered under the Exchange Act, in either case, and a successor depository is not appointed by the Company within 90 days of such notice, or (ii) an Event of Default has occurred and is continuing or (iii) the Company, in its sole discretion, notifies the Trustee in writing that it elects to cause the issuance of Definitive Notes under this Indenture.

(b) Any Global Note that is transferable to the beneficial owners thereof pursuant to this Section 2.4 shall be surrendered by the Depository to the Trustee located at its principal corporate trust office in the Borough of Manhattan, The City of New York, to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations. Any portion of a Global Note transferred pursuant to this Section 2.4 shall be executed, authenticated and delivered only in denominations of $2,000 principal amount and any integral multiple of $1,000 in excess of $2,000 and registered in such names as the Depository shall direct. Any Definitive Note delivered in exchange for an interest in the Transfer Restricted Note shall, except as otherwise provided by Section 2.3(e) hereof, bear the applicable restricted securities legend and definitive securities legend set forth in Exhibit 1 hereto.

(c) Subject to the provisions of Section 2.4(b) hereof, the registered Holder of a Global Note shall be entitled to grant proxies and otherwise authorize any Person, including

Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(d) In the event of the occurrence of one of the events specified in Section 2.4(a) hereof, the Company shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons. In the event that such Definitive Notes are not issued, the Company expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 6.06 of this Indenture, the right of any beneficial owner of Notes to pursue such remedy with respect to the portion of the Global Note that represents such beneficial owner's Notes as if such Definitive Notes had been issued.

EXHIBIT 1
to
RULE 144A/REGULATION S/IAI APPENDIX

[FORM OF FACE OF NOTE]

[Global Notes Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

[Restricted Notes Legend]

THE SECURITY (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THE SECURITY EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) SUCH SECURITY MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS [IN THE CASE OF RULE 144A NOTES: ONE YEAR] [IN THE CASE OF REGULATION S NOTES: 40 DAYS] AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (1) (a) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE UNDER RULE 144A, TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN

RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (b) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (c) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144 UNDER THE SECURITIES ACT, (d) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501 (a) (1), (2), (3) OR (7) OF THE SECURITIES ACT (AN "INSTITUTIONAL ACCREDITED INVESTOR")) THAT, PRIOR TO SUCH TRANSFER, FURNISHES THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS (THE FORM OF WHICH CAN BE OBTAINED FROM THE TRUSTEE) AND, IF SUCH TRANSFER IS IN RESPECT OF AN AGGREGATE PRINCIPAL AMOUNT OF NOTES LESS THAN $250,000, AN OPINION OF COUNSEL ACCEPTABLE TO SIRIUS XM RADIO INC. THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT OR (e) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF SIRIUS XM RADIO INC. SO REQUESTS), (2) TO SIRIUS XM RADIO INC. OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER FROM IT OF THE SECURITY EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN (A) ABOVE.

[Definitive Notes Legend]

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

[Original Issue Discount Legend]

THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). UPON WRITTEN REQUEST, THE ISSUER WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND DATE OF THE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTE AND (3) THE YIELD TO MATURITY OF THE NOTE. HOLDERS SHOULD CONTACT THE TREASURER OF THE ISSUER AT 1221 AVENUE OF THE AMERICAS, 36TH FLOOR, NEW YORK, NEW YORK 10020.

CUSIP No. (144A) 82967NAA6; (Reg S) U82764AA6
ISIN No. (144A) US82967NAA63; (Reg S) USU82764AA62

No._____ $_____

9.75% Senior Secured Notes due 2015

Sirius XM Radio Inc., a Delaware corporation, promises to pay to _____ , or registered assigns, the principal sum of _____ Dollars on September 1, 2015.

Interest Payment Dates: _____ and _____ ..

Record Dates: [February 15 and August 15]* [the last Business Day prior to the applicable interest payment date]**.

Additional provisions of this Note are set forth on the other side of this Note.

Dated: August 24, 2009

SIRIUS XM RADIO INC.

By _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

U.S. BANK NATIONAL ASSOCIATION

as Trustee, certifies that this is one of the
Notes referred to in the Indenture

Dated:

By _____
Authorized Signatory

* Include for Definitive Notes.

** Include for Global Notes.

[FORM OF REVERSE SIDE OF NOTE]
9.75% Senior Secured Note due 2015

1. Interest

Sirius XM Radio Inc., a Delaware corporation (such corporation and its successors and assigns under the Indenture hereinafter referred to, being herein called the "*Company*"), promises to pay interest on the principal amount of this Note at the rate per annum shown above. The Company will pay interest semiannually on March 1 and September 1 of each year, commencing March 1, 2010. Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from August 24, 2009. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company will pay interest on overdue principal at the rate borne by this Note plus 1.0% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

2. Maturity

The Notes will mature on September 1, 2015.

3. Method of Payment

The Company will pay interest on the Notes (except defaulted interest) to the Persons who are registered holders of Notes at the close of business on the February 15 or August 15 next preceding the interest payment date even if Notes are canceled after the record date and on or before the interest payment date. Holders must surrender Notes to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of the Notes represented by a Global Note (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Company will make all payments in respect of a certificated Note (including principal, premium and interest) at the office of the Paying Agent, except that, at the option of the Company, payment of interest may be made by mailing a check to the registered address of each Holder thereof; *provided, however,* that payments on a certificated Note will be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

4. Paying Agent and Registrar

Initially, U.S. Bank National Association, a New York banking corporation (the "Trustee"), will act as Paying Agent and Registrar. The Company may appoint and change any Paying Agent, Registrar or co-registrar without notice. The Company or any of its domestically incorporated Wholly Owned Subsidiaries may act as Paying Agent, Registrar or co-registrar.

5. Indenture

The Company issued the Notes under an Indenture dated as of August 24, 2009 (the "*Indenture*"), between the Company and the Trustee. The terms of the Notes include those stated in the Indenture. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Noteholders are referred to the Indenture for a statement of those terms.

The Notes are general unsecured senior obligations of the Company. The Company shall be entitled, subject to its compliance with Section 4.03 of the Indenture, to issue Additional Notes pursuant to Section 2.13 of the Indenture. The Notes issued on the Issue Date and any Additional Notes will be treated as a single class for all purposes under the Indenture. The Indenture contains covenants that limit the ability of the Company and its subsidiaries to incur additional indebtedness; pay dividends or distributions on, or redeem or repurchase capital stock; make investments; issue or sell capital stock of subsidiaries; engage in transactions with affiliates; create liens on assets; transfer or sell assets; guarantee indebtedness; restrict dividends or other payments of subsidiaries; consolidate, merge or transfer all or substantially all of its assets and the assets of its subsidiaries; change its business; and engage in sale/leaseback transactions. These covenants are subject to important exceptions and qualifications.

6. Optional Redemption

At any time prior to September 1, 2012, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture at a redemption price equal to 109.750% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date), with the Net Cash Proceeds from the issuance or sale of Capital Stock of the Company or a contribution to the Company's common equity capital made with the Net Cash Proceeds from a concurrent issuance or sale of Capital Stock by the Company's direct or indirect parent; provided that:

(i) at least 65% of the aggregate principal amount of Notes originally issued under the Indenture (excluding Notes held by the Company and its Affiliates) remains outstanding immediately after the occurrence of such redemption; and

(ii) the redemption occurs within 45 days of the date of the closing of such issuance or sale of Capital Stock.

At any time prior to September 1, 2012, the Company, at its option, may redeem all, or from time to time, any part of the Notes on not less than 30 days nor more than 60 days notice as provided in the Indenture (except that, notwithstanding the provisions of Section 3.02 of the Indenture, any notice of redemption for the Notes given pursuant to said Section need not set forth the redemption price but only the manner of calculation thereof) at a Make Whole Redemption Price equal to the greater of the following amounts:

(i) 100% of the principal amount of the Notes then outstanding to be so redeemed;

(ii) the sum of the redemption price of the Note at September 1, 2012 (such redemption price being set forth in the table appearing below hereunder) and the present

values of the remaining scheduled payments of interest on the Notes to be redeemed to, but excluding September 1, 2012, discounted to the applicable redemption date in accordance with customary market practice on a semi-annual basis at a rate equal to the sum of the Treasury Rate plus 0.50%.

plus, in either of the above cases, accrued and unpaid, if any, on the principal amount being redeemed to the applicable redemption date.

The Make Whole Redemption Price for the Notes will be calculated by the Independent Investment Banker assuming a 360-day year consisting of twelve 30-day months.

For purposes of calculating the Make Whole Redemption Price pursuant to the foregoing optional redemption provisions, the following terms will have the meanings set forth below.

"*Comparable Treasury Issue*" means the U.S. Treasury security or securities selected by the Independent Investment Banker as having an actual or interpolated maturity most nearly equal to the period from the redemption date to September 1, 2012; *provided*, that if the period from the redemption date to September 1, 2012 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Comparable Treasury Price*" means, with respect to any redemption date:

(i) the average of the Reference Treasury Dealer Quotations for that redemption date, after excluding the highest and lowest of the Reference Treasury Dealer Quotations;

(ii) if the Trustee obtains fewer than four Reference Treasury Dealer Quotations, the average of all Reference Treasury Dealer Quotations so received; or

(iii) if only one Reference Treasury Dealer Quotation is received, such quotation.

"*Independent Investment Banker*" means one of the Reference Treasury Dealers selected by the Company.

"*Reference Treasury Dealer*" means each of four primary U.S. Government securities dealers in New York City (each a "*Primary Treasury Dealer*"), consisting of (i) J.P. Morgan Securities Inc. (or its affiliate), and (ii) three other nationally recognized investment banking firms (or their affiliates) that the Company selects in connection with the particular redemption, and their respective successors, provided that if any of them ceases to be a Primary Treasury Dealer, the Company will substitute another nationally recognized investment banking firm (or its affiliate) that is a Primary Treasury Dealer.

"*Reference Treasury Dealer Quotations*" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 3:30 p.m., New York City time, on the third Business Day preceding that redemption date.

"*Treasury Rate*" means, with respect to any redemption date, the rate per year equal to the semi-annual equivalent yield to maturity or interpolated maturity (on a day count basis) of the Comparable Treasury Issue, calculated on the third Business Day preceding the applicable redemption date, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for that redemption date.

Except pursuant to this Section 6, the Notes shall not be redeemable at the Company's option prior to September 1, 2012.

On or after September 1, 2012, the Company may on any one or more occasions redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest and additional interest, if any, on the Notes redeemed to, but excluding, the applicable redemption date, if redeemed during the twelve-month period beginning on September 1 of the years indicated below, subject to the rights of Holders on the relevant record date to receive interest and additional interest, if any, on the relevant interest payment date:

Year	Percentage
2012	104.875%
2013	102.438%
2014 and thereafter	100.000%

Unless the Company defaults in the payment of the applicable redemption price, on or after the applicable redemption date, interest will cease to accrue on the Notes or portions of the Notes called for redemption.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the person in whose name the Note is registered at the close of business, on such record date.

7. Notice of Redemption

Notice of redemption will be mailed by first-class mail at least 30 days but not more than 60 days before the redemption date to each Holder of Notes to be redeemed at his registered address. Notes in denominations larger than $2,000 principal amount may be redeemed in part but only in whole multiples of $1,000 in excess of $2,000. If money sufficient to pay the redemption price of and accrued interest on all Notes (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date interest ceases to accrue on such Notes (or such portions thereof) called for redemption.

8. Put Provisions

Upon a Change of Control, any Holder of Notes will have the right to cause the Company to repurchase all or any part of the Notes of such Holder at a repurchase price equal to 101% of the principal amount of the Notes to be repurchased plus accrued and unpaid, if any, interest to the date of repurchase (subject to the right of Holders of record on the relevant record date to receive interest due on the related interest payment date) as provided in, and subject to the terms of, the Indenture.

9. Denominations; Transfer; Exchange

The Notes are in registered form without coupons in denominations of $2,000 principal amount and any integral multiple of $1,000 in excess of $2,000. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Notes selected for redemption (except, in the case of a Note to be redeemed in part, the portion of the Note not to be redeemed) or any Notes for a period of 15 days before a selection of Notes to be redeemed or 15 days before an interest payment date.

10. Persons Deemed Owners

The registered Holder of this Note may be treated as the owner of it for all purposes.

11. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee for payment.

12. Discharge and Defeasance

Subject to certain conditions, the Company at any time shall be entitled to terminate some or all of its obligations under the Notes and the Indenture if the Company deposits with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Notes to redemption or maturity, as the case may be.

13. Amendment; Waiver

Subject to certain exceptions set forth in the Indenture, (a) the Indenture and the Notes may be amended with the written consent of the Holders of at least a majority in principal amount outstanding of the Notes (including consents obtained in connection with a tender offer or exchange offer for the Notes) and (b) any past default or noncompliance with any provision may be waived with the written consent of the Holders of a majority in principal amount outstanding of the Notes (including consents obtained in connection with a tender offer or exchange offer for the Notes). Subject to certain exceptions set forth in the Indenture, without the

consent of any Noteholder, the Company, and the Trustee shall be entitled to amend the Indenture or the Notes to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 of the Indenture, or to provide for uncertificated Notes in addition to or in place of certificated Notes, or to add guarantees with respect to the Notes, or to secure the Notes or to add additional covenants or surrender rights and powers conferred on the Company, or to comply with any requirement of the SEC in connection with qualifying the Indenture under the Act, or to make any change that does not adversely affect the rights of any Noteholder, or to make amendments to provisions of the Indenture relating to the transfer and legending of the Notes.

14. Defaults and Remedies

Under the Indenture, Events of Default include (a) default for 30 days in payment of interest on the Notes; (b) default in payment of principal on the Notes at maturity, upon redemption pursuant to paragraph 5 of the Notes, upon acceleration or otherwise, or failure by the Company to redeem or purchase Notes when required; (c) failure by the Company to comply with other agreements in the Indenture or the Notes, in certain cases subject to notice and lapse of time; (d) certain accelerations (including failure to pay within any grace period after final maturity) of other Indebtedness of the Company if the amount accelerated (or so unpaid) exceeds $25 million; (e) certain events of bankruptcy or insolvency with respect to the Company and the Significant Subsidiaries; (f) certain judgments or decrees for the payment of money in excess of $25 million; (g) any written repudiation or disaffirmation by the Company or any Guarantor of any of its obligations under the Security Documents; and (h) with respect to any Collateral having a fair market value in excess of $25 million, the security interest in such Collateral ceases to be in full force and effect other than in accordance with the terms of the Indenture and the Security Documents, is declared invalid or unenforceable by a court of competent jurisdiction the Company or any Guarantor asserts that such security interest is invalid and unenforceable in any pleading in any court of competent jurisdiction. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Notes may declare all the Notes to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Notes being due and payable immediately upon the occurrence of such Events of Default.

Noteholders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in principal amount of the Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Noteholders notice of any continuing Default (except a Default in payment of principal or interest) if it determines that withholding notice is in the interest of the Holders.

15. Trustee Dealings with the Company

Subject to certain limitations imposed by the Act, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

16. No Recourse Against Others

A director, officer, employee, incorporator or stockholder, as such, of the Company or any of its Restricted Subsidiaries or the Trustee shall not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Noteholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

17. Authentication

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Note.

18. Abbreviations

Customary abbreviations may be used in the name of a Noteholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

19. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Note Identification Procedures the Company has caused CUSIP numbers to be printed on the Notes and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Noteholders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

20. Governing Law

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company will furnish to any Noteholder upon written request and without charge to the Note holder a copy of the Indenture which has in it the text of this Note in larger type. Requests may be made to:

Sirius XM Radio Inc.
1221 Avenue of the Americas, 36th Floor
New York, NY 10020
Attention: General Counsel

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to:

(Print or type assignee's name, address and zip code)

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: Your Signature:

Sign exactly as your name appears on the other side of this Note.

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to Section 4.06 (Asset Sale) or 4.10 (Change of Control) of the Indenture, check the box:

Asset Sale ☐ Change of Control ☐

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 4.06 or 4.10 of the Indenture, state the amount in principal amount: $

Dated: Your Signature:
(Sign exactly as your name appears on the other side of this Note.)

Signature Guarantee:

(Signature must be guaranteed)

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Note Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Notes Exchange Act of 1934, as amended.

EXHIBIT 2 to Rule 144A/REGULATION S/IAI APPENDIX

Form of
Transferee Letter of Representation

Sirius XM Radio Inc.
1221 Avenue of the Americas, 36th Floor
New York, NY 10020
Attention: General Counsel

In care of
U.S. Bank Corporate Trust Services
100 Wall Street, Suite 1600
New York, NY 10005
Attention: Thomas E. Tabor

Ladies and Gentlemen:

This certificate is delivered to request a transfer of $[ ] principal amount of the 9.75% Senior Notes due 2015 (the "Notes") of Sirius XM Radio Inc. (the "Company").

Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name:_____
Address:_____
Taxpayer ID Number:_____

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")), purchasing for our own account or for the account of such an institutional "accredited investor" at least $250,000 principal amount of the Notes, and we are acquiring the Notes not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we invest in or purchase securities similar to the Notes in the normal course of our business. We, and any accounts for which we are acting, are each able to bear the economic risk of our or its investment.

2. We understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Notes to offer, sell or otherwise transfer such Notes prior to the date that is one year after the later of the date of original issue and the last date on which the Company or any affiliate of the Company was the owner of such Notes (or any predecessor thereto) (the "Resale Restriction Termination Date") only (i) to the Company, (ii) in the United States to a person whom the seller reasonably believes is a qualified institutional buyer in a transaction meeting the requirements of

Rule 144A, (iii) to an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act that is an institutional accredited investor purchasing for its own account or for the account of an institutional accredited investor, in each case in a minimum principal amount of the Notes of $250,000, (iv) outside the United States in a transaction complying with the provisions of Rule 904 under the Securities Act, (v) pursuant to an exemption from registration under the Securities Act provided by Rule 144 (if available) or (vi) pursuant to an effective registration statement under the Securities Act, in each of cases (i) through (vi) subject to any requirement of law that the disposition of our property or the property of such investor account or accounts be at all times within our or their control and in compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Notes is proposed to be made pursuant to clause (iii) above prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Company and the Trustee, which shall provide, among other things, that the transferee is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act and that it is acquiring such Notes for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Company and the Trustee reserve the right prior to the offer, sale or other transfer prior to the Resale Restriction Termination Date of the Notes pursuant to clause (iii), (iv) or (v) above to require the delivery of an opinion of counsel, certifications or other information satisfactory to the Company and the Trustee.

TRANSFEREE _____

By: _____

EXHIBIT 2

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), dated as of _____, 200 _____, among _____ (the "*Guarantor*"), [a subsidiary of] Sirius XM Radio Inc. (or its permitted successor), a Delaware corporation (the "*Company*"), the Company, the other Guarantors (as defined in the Indenture referred to herein) and U.S. Bank National Association, as trustee under the Indenture referred to below (the "*Trustee*").

W I T N E S S E T H

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (the "*Indenture*"), dated as of August 24, 2009 providing for the issuance of 9.75% Senior Secured Notes due 2015 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances the Guarantor will execute and deliver to the Trustee a supplemental indenture pursuant to which the Guarantor will unconditionally guarantee all of the Company's Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "*Note Guarantee*"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guarantor and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition will have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. The Guarantor hereby agrees to provide an unconditional Guarantee on the terms and subject to the conditions set forth in this Note Guarantee and in the Indenture including but not limited to Article 10 thereof [*Add the following if the Material Subsidiary is the FCC License Subsidiary*: ; *provided, however,* that the Guarantor is providing such Guarantee only to the extent permitted under applicable law, rules or regulations, including rules and regulations of the Federal Communications Commission].

4. NO RECOURSE AGAINST OTHERS. No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guarantor, as such, will have any liability for any obligations of the Company or any Guarantor under the Notes, any Note Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

5. GOVERNING LAW. This Indenture and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York.

6. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, but all of them together represent the same agreement.

7. EFFECT OF HEADINGS. The Section headings herein are for convenience only and will not affect the construction hereof.

8. THE TRUSTEE. The Trustee will not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guarantor and the Company.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed all as of the date first above written.

Dated: _____, 20 _____

[GUARANTOR]

By: _____
Name: _____
Title: _____

[COMPANY]

By: _____
Name: _____
Title: _____

[EXISTING GUARANTORS]

By: _____
Name: _____
Title: _____

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Name: _____
Title: _____

Exhibit 4.62

Execution Version

COLLATERAL AGREEMENT

made by

SIRIUS XM RADIO INC.,

and certain of its Subsidiaries of from time to time party hereto,

to and in favor of

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

Dated as of August 24, 2009

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COLLATERAL AGREEMENT, dated as of August 24, 2009, made by each of the signatories hereto other than the Collateral Agent, the Trustee and any Authorized Representative for any Additional Secured Debtholder referred to below (together with any other entity that may become a party hereto as provided herein, the "Grantors"), to and in favor of U.S. Bank National Association, as Collateral Agent for the ratable benefit of the Secured Parties, and accepted and agreed to by U.S. Bank National Association, as the Trustee (as defined below) and each other Authorized Representative for any Additional Secured Debtholder from time to time party hereto.

W I T N E S S E T H:

WHEREAS, pursuant to the 9.75% Senior Secured Notes Indenture dated as of the date hereof (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "Indenture") by and among the Company, the Guarantors, and U.S. Bank National Association, as Trustee, the Company issued 9.75% senior secured notes due 2015 (the "Notes") to the Noteholders in accordance with the terms thereof;

WHEREAS, the Collateral Agent has agreed to act as collateral agent for the Secured Parties for the purposes of holding any and all security for the payment and performance of the obligations of the Company under the Indenture, the Notes and the other Indenture Documents, as well as any Additional Secured Obligations;

WHEREAS, pursuant to the Indenture Documents, each Guarantor agreed to unconditionally guarantee the payment of the Company Note Obligations;

WHEREAS, each Grantor is a member of an affiliated group of companies that includes each other Grantor;

WHEREAS, the Grantors are engaged in related businesses, and each Grantor will derive substantial direct and indirect benefit from the issuance of the Notes under the Indenture and the other Indenture Documents and each Grantor is, therefore, willing to enter into this Agreement; and

WHEREAS, as a condition to entry into the Indenture, each Grantor is required to execute and deliver this Agreement to the Collateral Agent for its benefit and for the ratable benefit of the Secured Parties as security for the payment and performance of such Grantor's obligations under the Indenture, the Notes, the other Indenture Documents and the Additional Secured Debt Documents to which it is a party.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each of Grantors hereby agrees with the Collateral Agent, for the ratable benefit of the Secured Parties, as follows:

SECTION 1. DEFINED TERMS

1.1. Definitions. (a) Unless otherwise defined herein, terms defined in the Indenture and used herein shall have the meanings given to them in the Indenture.

(b) The following terms which are defined in the New York UCC are used herein as so defined: Accounts, Account Debtor, Authenticate, Certificated Security, Chattel Paper, Commercial Tort Claim, Commodity Account, Commodity Contract, Commodity Intermediary, Documents, Electronic Chattel Paper, Entitlement Order, Equipment, Farm Products, Financial Asset, Fixtures, Goods, Instruments, Inventory, Letter of Credit Rights, Money, Payment Intangibles, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(c) The following terms shall have the following meanings:

"Accounts Receivable" means any right to payment of a monetary obligation from customers of the Company or any of its Restricted Subsidiaries, earned by the Company or any of its Restricted Subsidiaries by the performance of services rendered by it in the ordinary course of business.

"Additional Company Secured Debt Obligations": the unpaid principal of and interest on (including interest accruing after the maturity of the Additional Secured Debt and disbursements in respect of letters of credit issued thereunder, if any, and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Company, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Additional Secured Debt and all other Obligations and liabilities of the Company to each Authorized Representative of any Additional Secured Debtholder, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, each Additional Secured Debt Document, any letters of credit issued thereunder, or any other document made, delivered or given in connection therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to each Authorized Representative or to any Additional Secured Debtholder that are required to be paid by the Company) or otherwise.

"Additional Guarantor Secured Debt Obligations": with respect to any Guarantor, all Obligations and liabilities of such Guarantor which may arise under or in connection with any Guarantee in respect of the Additional Company Secured Debt Obligations or any Additional Secured Debt Document to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to any Additional Secured Debtholder or any Authorized Representative that are required to be paid by such Guarantor pursuant to the terms of any Additional Secured Debt Document).

"Additional Secured Debt": (a) the Refinanced Term Debt, if any, and (b) the unpaid amount of Indebtedness of the Company or any Guarantor under any Additional Secured Debt Document, in either case, which Indebtedness (i) is permitted to be incurred by the Company or the Guarantors under the Indenture and each Additional Secured Debt Document, (ii) is permitted under the Indenture and each Additional Secured Debt Document to be secured equally and ratably with the Notes Obligations and any other Additional Secured Debt, and (iii) the Company and each Guarantor takes the steps necessary under the Refinancing Intercreditor Agreement in order for such Indebtedness to be secured equally and ratably.

"Additional Secured Debt Documents": the agreements evidencing any Additional Secured Obligations and the Collateral Documents, including, without limitation, the Refinanced Term Credit Agreement, if any.

"Additional Secured Debtholder": at any time, a Person which then is a holder of any Additional Secured Debt;provided that the Company and the Authorized Representative of such Additional Secured Debtholder shall have executed and delivered a Joinder Agreement in accordance with Section 5.13 of the Refinancing Intercreditor Agreement.

"Additional Secured Obligations": the Additional Company Secured Debt Obligations and the Additional Guarantor Secured Debt Obligations.

"Agreement": this Collateral Agreement, as the same may be amended, restated supplemented or otherwise modified from time to time.

"Applicable Authorized Representative": as defined in the Refinancing Intercreditor Agreement.

"Authorized Representative": (i) the Trustee, (ii) the Refinanced Term Agent, if any, and (iii) any other trustee or agent designated as an "Authorized Representative" for any Additional Secured Debtholder in a Joinder Agreement delivered to the Collateral Agent in accordance with Section 5.13 of the Refinancing Intercreditor Agreement for so long as the Additional Secured Obligations for which such party is serving in such capacity constitutes Secured Obligations hereunder; provided that so long as there are no Additional Secured Obligations, the Trustee will be deemed to be the only Authorized Representative for the Secured Parties.

"Capital Stock" of any Person means any and all shares, interests (including partnership interests and membership interests in limited liability companies), 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.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral": as defined in Section 2(a).

"Collateral Account": any collateral account established by the Collateral Agent as provided in Section 5.1 or 5.4.

"Collateral Agent": U.S. Bank National Association, acting as collateral agent on behalf of the Noteholders and other Secured Parties or any successor collateral agent appointed hereunder, and its successors and permitted assigns.

"Collateral Documents": this Agreement, the Refinancing Intercreditor Agreement, if any, and each of the security agreements and other instruments and documents executed and delivered pursuant to the foregoing or pursuant to Article 11 of the Indenture or pursuant to any Additional Secured Debt Document.

"Company": Sirius XM Radio Inc., a Delaware corporation.

"Company Note Obligations": means the unpaid principal of and interest on (including interest accruing after the maturity of the Notes) and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Company, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) all Obligations and liabilities of the Company to the Trustee or to any Noteholder, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, the Indenture, any other Indenture Document, or any other document made, delivered or given in connection therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the Trustee, the Collateral Agent or to any Noteholder that are required to be paid by the Company) or otherwise.

"Company-XM Merger" means (a) a merger or consolidation of the Company with or into XM Satellite Radio Holdings Inc. or XM Satellite Radio Inc., as the case may be, or a merger or consolidation of XM Satellite Radio Holdings Inc. or XM Satellite Radio Inc., as the case may be, with or into the Company or (b) any assignment, transfer, conveyance or other disposition of all or substantially all of the properties or assets of the Company to XM Satellite Radio Holdings Inc. or XM Satellite Radio Inc., as the case may be, or of XM Satellite Radio Holdings Inc. or XM Satellite Radio Inc., as the case may be, to the Company.

"Copyright Licenses": any written agreement, now or hereafter in effect, naming any Grantor as licensor or licensee (including, without limitation, those listed in Schedule 6 as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time), granting any right to any third party under any Copyright now or hereafter owned by any Grantor or that such Grantor otherwise has the right to license, or granting any right to any Grantor under any copyright now or hereafter owned by any third party, and all rights of such Grantor under any such agreement.

"Copyrights": (i) all domestic and foreign copyright rights, whether as author, assignee, transferee or otherwise, and (ii) all registrations of and applications to register

the rights corresponding thereto throughout the world, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office, including, without limitation, each registration and application identified in Schedule 6 as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Deposit Account": (i) all "deposit accounts" as defined in Article 9 of the UCC, and (ii) all other accounts maintained with any financial institution (other than Securities Accounts or Commodity Accounts) together, in each case, with all funds held therein and all certificates or instruments representing any of the foregoing.

"Disposition": with respect to any property, any sale, lease, sale and leaseback, assignment, conveyance, transfer, exchange or other disposition thereof; and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"Excluded Assets": (i) any Accounts Receivable, (ii) any cash or Temporary Cash Investments, (iii) subject to the proviso set forth in the definition thereof, any Excluded Satellite Collateral, (iv) any Excluded Inventory, (v) the Excluded Equity Interests, (vi) to the extent (but only to the extent) that at any time the Collateral Agent may not validly possess a security interest in any FCC License pursuant to the Communications Act of 1934, as amended, and the regulations promulgated thereunder, as in effect at such time, such FCC License; provided that the Collateral does include, to the maximum extent permitted by law, all rights incident or appurtenant to such FCC License and the right to receive all proceeds derived from or in connection with the sale, assignment or transfer of such FCC Licenses, and (vii) any General Intangibles arising under any license, contract or agreement (including any such contract or agreement for the construction or purchase of a Satellite) if and for so long as the grant of such security interest shall constitute or result in a breach or termination pursuant to the terms of, or a default under, such license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the New York UCC or any other applicable law or principles of equity); provided, however, that such security interest shall attach immediately at such time as the condition causing such breach, termination or default shall cease to be applicable and, to the extent severable, shall attach immediately to any portion of such license, contract or agreement that does not result in any of the consequences specified this clause, including any Proceeds of such contract or agreement; provided, further, that in the case of any Excluded Assets referred to above, such security interest shall attach immediately and such property shall become Collateral at any time when such property or assets constitute collateral or otherwise secure Indebtedness with respect to the MSSFI Credit Agreement or any Refinanced Term Debt.

"Excluded Equity Interests": the issued and outstanding voting Equity Interests of any Foreign Subsidiary in excess of 65% of the aggregate issued and outstanding voting Equity Interests of such Foreign Subsidiary.

"Excluded Inventory": finished goods, chip sets and other raw material components used in manufacturing radios.

"Excluded Satellite Collateral" means (a) so long as the Loral Credit Agreement is in effect, the "Collateral", as defined thereunder on the date hereof, and (b) so long as any Replacement Satellite Vendor Indebtedness of the Company or any Restricted Subsidiary owed to a Satellite Vendor and incurred in accordance with the Indenture to finance the construction or purchase by the Company or a Restricted Subsidiary of a "replacement satellite" (as defined in the definition of Replacement Satellite Vendor Indebtedness) is outstanding, (i) the replacement satellite being financed thereunder (including any work-in-progress thereof), (ii) any General Intangibles arising under any contract or agreement for the construction or purchase of such Satellite, to the extent such General Intangibles are excluded from the Collateral pursuant to clause (vii) of the definition of "Excluded Assets", and (iii) any Proceeds of the foregoing, in each case if and for so long as the grant of a security interest therein to secure the Note Obligations shall constitute or result in a breach or termination pursuant to the terms of, or a default under, the Loral Credit Agreement or the agreements governing or evidencing such other Replacement Satellite Vendor Indebtedness, as applicable; provided that such security interest shall attach immediately at such time as the condition causing such breach, termination or default shall cease to be applicable and, to the extent severable, shall attach immediately to any portion of the Collateral, Satellite, General Intangibles or the Proceeds thereof that does not result in any of the consequences specified in this definition.

"FCC Licenses" means all authorizations, orders, licenses and permits issued by the FCC to the Company or any of its Restricted Subsidiaries under which the Company or any of its Restricted Subsidiaries is authorized to provide satellite digital radio service in the United States, to launch and operate any of its Satellites and the TT&C Stations related thereto or to operate any of its transmit only, receive only or transmit and receive earth stations.

"General Intangibles": all "general intangibles" as such term is defined in Section 9-102(a)(42) of the New York UCC and, in any event, including, without limitation, with respect to any Grantor, all rights of such Grantor to receive any tax refunds, corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, Hedging Agreements and other agreements), Intellectual Property, goodwill, registrations, franchises and any letter of credit, guarantee, claim, security interest or other security to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject.

"Grantors": as defined in the Preamble to this Agreement.

"Guarantors": the collective reference to each Grantor other than the Company.

"Guarantor Note Obligations": with respect to any Guarantor, all Obligations and liabilities of such Guarantor which may arise under or in connection with the Indenture (including, without limitation, Article 10 thereof) or any other Indenture Document to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise

(including, without limitation, all fees and disbursements of counsel to any Secured Party that are required to be paid by such Guarantor pursuant to the terms of any Indenture Document).

"Indenture Documents": the Indenture and the other documentation from time to time executed and delivered in connection therewith, including any supplemental indentures.

"Insurance": shall mean: (i) all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent is the loss payee thereof) and (ii) any key man life insurance policies.

"Intellectual Property": all intellectual property of every kind and nature now owned or hereafter acquired by any Grantor, including, without limitation, all (i) Copyrights, (ii) Copyright Licenses, (iii) Patents, (iv) Patent Licenses, (v) Trademarks, (vi) Trademark Licenses, (vii) Trade Secrets, (viii) Trade Secret Licenses, (ix) inventions, (x) designs, (xi) confidential or proprietary technical and business information, (xii) know-how, show-how or other data or information, (xiii) software and databases and all embodiments or fixations thereof and related documentation, (xiv) registrations and franchises, and (xv) all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

"Intercompany Note": any promissory note evidencing loans made by any Grantor to Company or any of its Subsidiaries.

"Investment Property": the collective reference to (i) all "investment property" as such term is defined in Section 9-102(a)(49) of the New York UCC including, without limitation, all Certificated Securities and Uncertificated Securities, all Security Entitlements, all Securities Accounts, all Commodity Contracts and all Commodity Accounts (other than any Voting Stock of a Foreign Subsidiary constituting Excluded Equity Interests and excluded from the definition of "Pledged Equity Interests"), (ii) security entitlements, in the case of any United States Treasury book-entry securities, as defined in 31 C.F.R. section 357.2, or, in the case of any United States federal agency book-entry securities, as defined in the corresponding United States federal regulations governing such book-entry securities, and (iii) whether or not constituting "investment property" as so defined, all Pledged Notes, all Pledged Equity Interests, all Pledged Security Entitlements and all Pledged Commodity Contracts.

"Issuers": the collective reference to each issuer of a Pledged Security.

"Joinder Agreement": as defined in the Refinancing Intercreditor Agreement.

"Lien" means, any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations or financial condition of Company and its Subsidiaries taken as a

whole, (b) the ability of the Company and the Guarantors to perform any of their respective obligations under any Secured Debt Document or (c) the validity or enforceability of any Secured Debt Document or the rights or remedies of the Collateral Agent or any Secured Party thereunder.

"Material Contract": any agreement, contract or license (other than any FCC License) or other arrangement (other than an agreement, contract or arrangement representing indebtedness for borrowed money) to which any Grantor is a party that is material to the Grantors and their Subsidiaries, taken as a whole, and for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to materially adversely affect the business or financial condition of the Company or the Guarantors.

"MSSFI": Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent under the MSSFI Credit Agreement.

"MSSFI Collateral Agreement": that certain Guarantee and Collateral Agreement dated as of June 20, 2007 among MSSFI, the Company and the Guarantors.

"MSSFI Credit Agreement": that certain Term Credit Agreement dated as of June 20, 2007 among MSSFI, the Company and the Guarantors, without giving effect to any amendments, restatements or other modifications thereof.

"New York UCC": the Uniform Commercial Code as from time to time in effect in the State of New York.

"Noteholder": a Person in whose name a Note is registered in the register maintained by the Registrar pursuant to the Indenture.

"Note Obligations": the Company Note Obligations and the Guarantor Note Obligations.

"Notes": the notes issued and outstanding under the Indenture (or under any supplemental indenture) at any time and from time to time, including any additional notes.

"Obligations": any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

"Patent License": any written agreement, now or hereafter in effect, providing for the grant by or to any Grantor of any right to make, use or sell any invention covered by a

Patent, including, without limitation, any of the foregoing referred to in Schedule 6 as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Patents": (i) all United States, foreign, and multinational patents and patent applications, and all registrations and recordings thereof, including, without limitation, each issued patent and patent application identified in Schedule 6 as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time, all certificates of invention or similar property rights, (ii) all reissues, divisions, continuations, continuations-in-part, renewals, and extensions of any of the foregoing, (iii) all inventions described and claimed therein, and (iv) the right to make, use and/or sell the inventions disclosed or claimed therein.

"Permitted Liens": with respect to each Grantor, any Lien permitted on such Grantor's Collateral pursuant to the Indenture Documents and any Additional Secured Debt Documents applicable to such Grantor.

"Pledged Alternative Equity Interests": all interests of any Grantor in participation or other interests in any equity or profits of any Person and the certificates, if any, representing such interests and all payments of principal or interest, dividends, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such interests and any other warrant, right or option to purchase or acquire any of the foregoing; provided, however, that Pledged Alternative Equity Interests shall not include any Pledged Stock, Pledged Partnership Interests, Pledged LLC Interests and Pledged Trust Interests.

"Pledged Commodity Contracts": all commodity contracts listed on Schedule 2 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) and all other commodity contracts to which any Grantor is party from time to time.

"Pledged Debt Securities": all debt securities now owned or hereafter acquired by any Grantor, including, without limitation, the debt securities listed on Schedule 2, (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) together with the promissory notes and any other instruments evidencing such debt securities.

"Pledged Equity Interests": all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests, Pledged Trust Interests and Pledged Alternative Equity Interests.

"Pledged LLC Interests": all interests of any Grantor now owned or hereafter acquired in any limited liability company including, without limitation, all limited liability company interests listed on Schedule 2 hereto under the heading "Pledged LLC Interests" (as such schedule may be amended from time to time) and the certificates, if any, representing such limited liability company interests and any interest of such Grantor on the books and records of such limited liability company and all payments of principal or interest, dividends, cash, instruments and other property or proceeds from

time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests and any other warrant, right or option to purchase or acquire any of the foregoing.

"Pledged Partnership Interests": all interests of any Grantor now owned or hereafter acquired in any general partnership, limited partnership, limited liability partnership or other partnership including, without limitation, all partnership interests listed on Schedule 2 hereto under the heading "Pledged Partnership Interests" (as such schedule may be amended, restated, supplemented, replaced or otherwise modified from time to time) and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of such partnership and all payments of principal or interest, dividends, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests and any other warrant, right or option to purchase or acquire any of the foregoing.

"Pledged Notes": all promissory notes now owned or hereafter acquired by any Grantor including, without limitation, those listed on Schedule 2 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) and all Intercompany Notes at any time issued to any Grantor.

"Pledged Securities": the collective reference to the Pledged Debt Securities, the Pledged Notes and the Pledged Equity Interests.

"Pledged Security Entitlements": all security entitlements with respect to the financial assets listed onSchedule 2 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) and all other security entitlements of any Grantor.

"Pledged Stock": all shares of capital stock now owned or hereafter acquired by such Grantor, including, without limitation, all shares of capital stock described on Schedule 2 hereto under the heading "Pledged Stock" (as such schedule may be amended, restated, supplemented, replaced or otherwise modified from time to time), and the certificates, if any, representing such shares and any interest of such Grantor in the entries on the books of the issuer of such shares and all payments of principal or interest, dividends, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares and any other warrant, right or option to purchase or acquire any of the foregoing; provided, however, in the event that a pledge of the Equity Interests in any Foreign Subsidiary shall result in an adverse tax consequence to the Company, no Excluded Equity Interests shall be required to be pledged hereunder.

"Pledged Trust Interests": all interests of any Grantor now owned or hereafter acquired in a Delaware business trust or other trust including, without limitation, all trust interests listed on Schedule 2 hereto under the heading "Pledged Trust Interests" (as such schedule may be amended, restated, supplemented, replaced or otherwise modified from time to time) and the certificates, if any, representing such trust interests and any interest

of such Grantor on the books and records of such trust or on the books and records of any Securities Intermediary pertaining to such interest and all payments of principal or interest, dividends, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests and any other warrant, right or option to purchase or acquire any of the foregoing.

"Proceeds": all "proceeds" as such term is defined in Section 9-102(a)(64) of the New York UCC from time to time and, in any event, shall include, without limitation, all dividends or other income from the Pledged Securities, collections thereon or distributions or payments with respect thereto.

"Refinanced Term Agent": the administrative agent or collateral agent, as the case may be, for holders of Refinanced Term Debt under the Refinanced Term Credit Agreement and related security documents.

"Refinanced Term Credit Agreement": any credit agreement or similar senior secured bank debt agreement evidencing the amendment, waiver, modification, refinancing or replacement of Indebtedness outstanding pursuant to the MSSFI Credit Agreement.

"Refinanced Term Debt": Indebtedness outstanding under any Refinanced Term Credit Agreement, to the extent permitted to be incurred pursuant to the Indenture and any Additional Secured Debt Documents.

"Refinancing Intercreditor Agreement": an intercreditor agreement in substantially the form of Exhibit E hereto to be entered into by and among Company, the Guarantors, the Trustee, each Authorized Representative (as defined therein), and the Collateral Agent, if any.

"Required Secured Parties": at any time, the holders of more than 50% of the aggregate outstanding amount of the Secured Obligations then outstanding (together with, in the case of the Additional Secured Obligations, other than in connection with the exercise of remedies, if applicable, the aggregate unfunded commitments to extend credit which, when funded, would constitute Secured Obligations), voting as a single class. For this purpose only, Secured Obligations (or, if applicable, any such unfunded commitments in respect thereof) registered in the name of, or beneficially owned by, the Company or any affiliate of the Company shall be deemed not to be outstanding.

"Requirement of Law": as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Satellite" means any satellite owned by, or leased to, the Company or any Restricted Subsidiary and any satellite that is the subject of any satellite purchase agreement between or among the Company or any Restricted Subsidiary, on the one

hand, and any prime contractor and manufacturer of such satellite, on the other hand (whether such satellite is in the process of manufacture, has been delivered for launch or is in orbit (whether or not in operational service)).

"Satellite Codes": as defined in Section 4.12(a).

"Satellite Vendor": with respect to any satellite, the prime contractor and manufacturer of such satellite.

"Secured Debt Documents": collectively, the Indenture Documents and the Additional Secured Debt Documents.

"Secured Parties": (a) the Collateral Agent, (b) the Trustee and the Noteholders at any time and from time to time and (c) the Additional Secured Debtholders and their Authorized Representatives; *provided* that the Company and the Authorized Representative of such Additional Secured Debtholders comply with Section 5.13 of the Refinancing Intercreditor Agreement and execute a Joinder Agreement in accordance with the terms thereof.

"Secured Obligations": collectively, (a) the Note Obligations and (b) the Additional Secured Obligations.

"Securities Act": the Securities Act of 1933, as amended.

"Supplemental Collateral Agreement": an agreement substantially in the form of Exhibit F.

"Trademark License": any written agreement, now or hereafter in effect, providing for the grant by or to any Grantor of any right in, to, or under any Trademark, including, without limitation, any of the foregoing referred to in Schedule 6 as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Trademarks": (i) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade dress, trade styles, logos, designs and general intangibles of like nature, or other indicia of business or source identification, and all registrations and applications to register any of the foregoing, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country, or any political subdivision of any of the foregoing and all extensions or renewals thereof, including, without limitation, each registration and application identified in Schedule 6, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time, (ii) all goodwill of the business connected with the use of, and symbolized by, each of the above, and (iii) all other assets, rights and interests that uniquely reflect or embody such goodwill.

"Trade Secret License": any written agreement, now or hereafter in effect, providing for the grant by or to any Grantor of any right in, to, or under any Trade Secret.

"Trade Secrets": all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information.

"Trustee": U.S. Bank National Association, acting as trustee for the Noteholders and any successor trustee appointed under the Indenture and its successors and permitted assigns.

"XM Security Documents": each security agreement, each collateral agreement, each pledge agreement, the collateral agency agreement and each other document and instrument filed, registered, recorded, delivered, executed or possessed to create, perfect or enforce a lien on the collateral securing the 11.25% Senior Secured Notes due 2013 of XM Satellite Radio Inc.

1.2. Other Definitional Provisions. (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(a) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(b) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

(c) The expression "paid in full" and any other similar terms or phrases when used herein with respect to the Secured Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Secured Obligations, except for those contingent obligations and indemnification obligations which are not then due and payable.

(d) For the avoidance of doubt, all notices, requests, directions, demands or other forms of communications delivered to the Collateral Agent pursuant to this Agreement shall be in writing.

(f) All other rules of construction set forth in Section 1.03 of the Indenture are incorporated herein by reference.

SECTION 2. GRANT OF SECURITY INTEREST;
CONTINUING LIABILITY UNDER COLLATERAL

2.1. Grant of Security.

(a) Each Grantor hereby assigns and transfers to the Collateral Agent, and hereby grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in,

the following property, in each case, wherever located and now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations:

(i) all Accounts;

(ii) all Chattel Paper;

(iii) all Documents;

(iv) all Equipment (including (A) the Satellites (including the Satellites commonly referred to as FM-1, FM-2, FM-3 and FM-4) and associated equipment (including all ground segment equipment for tracking, telemetry, control and monitoring of the Satellites located at any TT&C Station) and (B) all software embedded therein and used for tracking, telemetry, control and monitoring of the Satellites located at any TT&C Station);

(v) all Goods, including Fixtures;

(vi) all Instruments;

(vii) all Investment Property;

(viii) all Software and all other Intellectual Property;

(ix) all rights under or relating to the FCC Licenses;

(x) all other General Intangibles (including any agreements relating to the Satellites or associated equipment referred to in clause (a)(iv) above (including any agreement for the construction or purchase of any Satellite, any agreement relating to the tracking, telemetry, control and monitoring of any Satellite, all rights to the geostationary position of any Satellite and any policy of insurance covering risk of loss or damage to any Satellite));

(xi) all Letter of Credit Rights;

(xii) all Commercial Tort Claims specified on Schedule 5;

(xiii) all books and records pertaining to the Collateral; and

(xiv) to the extent not otherwise included, Proceeds and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing and all Supporting Obligations relating thereto.

Notwithstanding anything to the contrary in this Agreement, (a) none of the Excluded Assets shall constitute Collateral for so long as such property or assets constitute

Excluded Assets and (b) to the extent any property or assets of the type described in the definition of "Excluded Assets" no longer constitute "Excluded Assets," such property or assets shall be deemed to be "Collateral" for purposes hereof.

(b) Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any Secured Party, (ii) each Grantor shall remain liable under and each of the agreements included in the Collateral, including, without limitation, any Accounts, any contracts relating to the Collateral and any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to any Accounts, any contracts relating to the Collateral and any agreements relating to Pledged Partnership Interests or Pledged LLC Interests and (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

2.2. Refinancing Intercreditor Agreement.

Notwithstanding anything herein to the contrary, the rights and remedies of Collateral Agent hereunder shall be subject to and governed by the terms of the Refinancing Intercreditor Agreement, to the extent then in effect.

SECTION 3. REPRESENTATIONS AND WARRANTIES

Each of the Grantors represents and warrants and covenants and agrees, acknowledging and confirming that the Collateral Agent and each other Secured Party is relying on such representations, warranties, covenants and agreements, that:

3.1. [Reserved].

3.2. Title; No Other Liens. Such Grantor has the right, title and interest that it purports to have in each item of the Collateral, free and clear of any and all Liens or claims, including, without limitation, liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as Grantor under a security agreement entered into by another Person, except for Permitted Liens. Except for Permitted Liens, no financing statement, mortgage or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, pursuant to this Agreement or as are otherwise permitted by the Indenture Documents and each Additional Secured Debt Documents.

3.3. Perfected First Priority Liens. (a) Except as otherwise contemplated by the terms of the Indenture and each Additional Secured Debt Document, and except with respect

to Letter of Credit Rights, the Liens created under the Collateral Documents and the security interests granted pursuant to this Agreement (i) constitute valid fully perfected security interests in all of the Collateral in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, as collateral security for such Grantor's Secured Obligations, enforceable in accordance with the terms hereof and (ii) are prior to all other Liens on the Collateral except for Liens otherwise expressly permitted by the terms of the Indenture and each Additional Secured Debt Document to have priority over the Liens created under the Collateral Documents. Without limiting the foregoing, but subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement, each Grantor has taken all actions necessary, including without limitation those specified in Section 4.2 to (A) establish the Collateral Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Property constituting Certificated Securities or Uncertificated Securities except to the extent such Investment Property constitutes cash or Temporary Cash Investments only, (B) establish the Collateral Agent's control (within the meaning of Section 9-105 of the UCC) over all Electronic Chattel Paper in excess of $5,000,000 individually, or $10,000,000 in the aggregate, and (C) establish the Collateral Agent's "control" (within the meaning of Section 16 of the Uniform Electronic Transaction Act as in effect in the applicable jurisdiction ("UETA")) over all "transferable records" (as defined in UETA) in excess of $5,000,000 individually, or $10,000,000 in the aggregate.

3.4. Name; Jurisdiction of Organization, etc. On the date hereof, such Grantor's exact legal name (as indicated on the public record of such Grantor's jurisdiction of formation or organization), jurisdiction of organization, organizational identification number, if any, and the location of such Grantor's chief executive office or sole place of business are specified on Schedule 4. Each Grantor is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as otherwise indicated on Schedule 4 as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time, the jurisdiction of each such Grantor's organization of formation is required to maintain a public record showing the Grantor to have been organized or formed. Except as specified on Schedule 4 as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time, it has not changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g. by merger, consolidation, change in corporate form or otherwise) within the past five years and has not within the last five years become bound (whether as a result of merger or otherwise) as Grantor under a security agreement entered into by another Person, which has not heretofore been terminated.

3.5. [Reserved].

3.6. [Reserved].

3.7. Investment Property. (a) Schedule 2 hereto (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) sets forth under the headings "Pledged Stock," "Pledged LLC Interests," "Pledged Partnership Interests" and "Pledged Trust Interests," respectively, all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests, in each case, of the Subsidiaries owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and

outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule. Schedule 2 hereto (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) sets forth under the heading "Pledged Debt Securities" or "Pledged Notes" all of the Pledged Debt Securities and Pledged Notes, in each case, of the Subsidiaries owned by any Grantor and all of such Pledged Debt Securities and Pledged Notes have been duly authorized, authenticated or issued, and delivered and are the legal, valid and binding obligations of the Issuers thereof enforceable in accordance with their terms and are not in default and constitute all of the issued and outstanding inter-company indebtedness evidenced by an instrument or certificated security of the respective issuers thereof owing to such Grantor. Schedule 2 hereto (as such schedule may be amended from time to time) sets forth under the headings "Securities Accounts", "Commodities Accounts", and, to the extent constituting Collateral in accordance with the terms hereof or any Supplemental Collateral Agreement , "Deposit Accounts", respectively, all of the Securities Accounts, Commodities Accounts and, to the extent constituting Collateral in accordance with the terms hereof or any Supplemental Collateral Agreement , Deposit Accounts, in each case which contain assets of more than $1,000,000, in which each Grantor has an interest. Each Grantor is the sole entitlement holder or customer of each such account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Agent pursuant hereto, or any party acting for the benefit of the Collateral Agent) having "control" (within the meanings of Sections 8-106, 9-106 and 9-104 of the New York UCC) over, or any other interest in, any such Securities Account, Commodity Account or, to the extent constituting Collateral in accordance with the terms hereof or any Supplemental Collateral Agreement with respect thereto, Deposit Account, or any securities, commodities or other property credited thereto.

(a) The shares of Pledged Equity Interests pledged by such Grantor hereunder constitute all of the issued and outstanding shares of all classes of the Equity Interests of each Issuer owned by such Grantor or, in the case of Voting Stock of any Foreign Subsidiary, if less (as a result of any Voting Stock of a Foreign Subsidiary constituting Excluded Equity Interests and being excluded from the definition of "Pledged Equity Interests"), 65% of the outstanding Voting Stock of any Foreign Subsidiary of each relevant Issuer.

(b) All the shares of the Pledged Equity Interests of such Grantor's Subsidiaries have been duly and validly issued and are fully paid and nonassessable.

(c) Part 1 of Schedule 9 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) lists all uncertificated Pledged LLC Interests and Pledged Partnership Interests of any Subsidiary of any Grantor the terms of which expressly provide that they are governed by Article 8 of the Uniform Commercial Code of any jurisdiction and Part 2 of Schedule 9 (as the same may be amended, restated, supplemented, replaced or otherwise modified) from time to time lists all uncertificated Pledged LLC Interests and Pledged Partnership Interests of any Subsidiary of any Grantor the terms of which do not expressly provide that they are governed by Article 8 of the Uniform Commercial Code of any jurisdiction.

(d) Part 3 of Schedule 9 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) lists all certificated Pledged LLC Interests and Pledged Partnership Interests of any Subsidiary of any Grantor the terms of which expressly

provide that they are governed by Article 8 of the Uniform Commercial Code of any jurisdiction and Part 4 ofSchedule 9 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) lists all certificated Pledged LLC Interests and Pledged Partnership Interests of any Subsidiary of any Grantor the terms of which do not expressly provide that they are governed by Article 8 of the Uniform Commercial Code of any jurisdiction.

(e) Such Grantor is the record and beneficial owner of the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except Permitted Liens and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests in any majority-owed Subsidiary of such Grantor.

(f) Each Issuer that is not a Grantor and is a Subsidiary of a Grantor hereunder has executed and delivered to the Collateral Agent an Acknowledgment and Consent, in substantially the form of Exhibit A, to the pledge of its Pledged Securities pursuant to this Agreement.

3.8. [Reserved].

3.9. [Reserved].

3.10. Intellectual Property. (a) Schedule 6 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) sets forth a true and complete list of all Intellectual Property owned by such Grantor in its own name on the date hereof that is registered or applied to be registered in the United States Patent and Trademark Office, the United States Copyright Office or any similar state, national or international offices or registries, and the registration number or application number applicable to such Intellectual Property. Except as set forth in Schedule 6 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time), such Grantor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to such Intellectual Property and is otherwise entitled to use, and grant others the right to use, all such Intellectual Property, without limitation, subject only to the license terms of the licensing or franchise agreements referred to in paragraph (c) below, except where the failure to have such rights could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(a) On the date hereof, all Intellectual Property registered or applied to be registered in the United States Patent and Trademark Office, the United States Copyright Office or any similar state, national or international office or registry owned by such Grantor is subsisting and unexpired and has not been abandoned, cancelled, or dedicated to the public, except where any such abandonment, cancellation, or dedication to the public could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the operation of such Grantor's business as currently conducted or as contemplated to be conducted nor the use of the Intellectual Property in connection therewith conflicts with, infringes upon, misappropriates, dilutes, or otherwise violates the Intellectual Property rights of any other Person, except where any such infringement, misappropriation, dilution, or violation

could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Except as set forth in Schedule 6, on the date hereof (i) none of the Intellectual Property registered or applied to be registered in the United States Patent and Trademark Office, the United States Copyright Office or any similar state, national or international office or registry owned by such Grantor is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor, and (ii) there are no other agreements, obligations, orders or judgments which affect the ownership, use, validity, enforceability, or registration of any such Intellectual Property, except where, in each case, the existence of such agreements, obligations, orders or judgments could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) To such Grantor's knowledge, there is currently no infringement or unauthorized use of any item of such Intellectual Property of such Grantor by any third party that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity, enforceability, ownership, or registration of, or such Grantor's rights in, any Intellectual Property registered or applied to be registered in the United States Patent and Trademark Office, the United States Copyright Office or any similar state, national or international office or registry owned by such Grantor, except where any such holding, decision, or judgment could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property owned or used by such Grantor that could reasonably be expected to lead to such item becoming invalid or unenforceable including, without limitation, unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with Trademarks and Trademark Licenses used in the conduct of such business, except where such use could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) No action or proceeding is pending or, to the knowledge of such Grantor, threatened, on the date hereof (i) seeking to limit, cancel or question the validity, enforceability, ownership, registration, or use of any Intellectual Property registered or applied to be registered in the United States Patent and Trademark Office, the United States Copyright Office or any similar state, national or international office or registry owned by such Grantor, (ii) alleging that any services provided by, processes used by, or products manufactured or sold by such Grantor infringes upon, misappropriates, dilutes, or otherwise violates, as the case may be, any such Intellectual Property right of any third party, (iii) alleging that any such Intellectual Property owned by such Grantor is being licensed, sublicensed or used in violation of any Intellectual Property right of any third party, or (iv) which, if adversely determined, would have a material adverse effect on the value of any such Intellectual Property owned by such Grantor, except where such action or proceeding could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the knowledge of such Grantor, no Person is engaging in any activity that infringes upon the Intellectual Property registered or applied to be registered in the United States Patent and Trademark Office, the United States Copyright Office or any

similar state, national or international office or registry owned or held by such Grantor, except where any such infringement could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as set forth in Schedule 6 hereto (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time), such Grantor has not granted any license, release, covenant not to sue, non-assertion assurance, or other right to any person with respect to any such Intellectual Property owned by such Grantor, except where such grant could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The consummation of the transactions contemplated by this Agreement will not result in the termination or impairment of any Intellectual Property owned or, to such Grantor's knowledge, held by such Grantor, except where any such termination or impairment could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(f) With respect to each written Copyright License, written Trademark License and written Patent License the loss of which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) such license is valid and binding and in full force and effect and represents the entire agreement between the respective licensor and licensee with respect to the subject matter of such license; (ii) such license will not cease to be valid and binding and in full force and effect on terms identical to those currently in effect as a result of the rights and interests granted herein, nor will the grant of such rights and interests constitute a breach or default under such license or otherwise give the licensor or licensee a right to terminate such license; (iii) such Grantor has not received any notice of termination or cancellation under such license; (iv) such Grantor has not received any notice of a breach or default under such license, which breach or default has not been cured; (v) such Grantor has not granted to any other third party any rights, adverse or otherwise, under such license; and (vi) such Grantor is not in breach or default in any material respect, and no event has occurred that, with notice and/or lapse of time, would constitute such a breach or default or permit termination, modification or acceleration under such license.

(g) Except as set forth in Schedule 6 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time), such Grantor has performed all acts, including, without limitation, recordation of its interests in Patents and Trademarks with the United States Patent and Trademark Office and in corresponding national and international patent offices, and recordation of its interests in Copyrights with the United States Copyright Office and in corresponding national and international copyright offices, and has paid all required fees and taxes to maintain each and every item of Intellectual Property owned by such Grantor in full force and effect and to protect and maintain its interest therein, except, in each case, where the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Such Grantor has used proper statutory notice in connection with its use of each material Patent, Trademark and Copyright included in the Intellectual Property owned or held by such Grantor, except where the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(h) (i) None of the Trade Secrets of such Grantor has been used, divulged, disclosed or appropriated to the detriment of such Grantor for the benefit of any other Person and (ii) no employee, independent contractor or agent of such Grantor is in default or breach of any term of any employment agreement, non-disclosure agreement, assignment of inventions

agreement or similar agreement or contract relating in any way to the protection, ownership, development, use or transfer of such Grantor's Intellectual Property, except where such use, divulgence, appropriation, default or breach could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(i) No Grantor is subject to any settlement or consents, judgment, injunction, order, decree, covenants not to sue, non-assertion assurances or releases that would impair the validity, enforceability, ownership, use, registration of, or such Grantor's rights in, any Intellectual Property, except, in each case, where any such settlement or other agreement or order could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.11. [Reserved].

3.12. [Reserved].

3.13. Commercial Tort Claims. As of the date hereof, no Grantor has any Commercial Tort Claims individually in excess of $5,000,000.

SECTION 4. COVENANTS

Each Grantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Secured Obligations shall have been paid in full (for avoidance of doubt, for purposes of calculating the aggregate permitted amounts under Section 4.2 hereof if the Grantor takes the action required by such sections with respect to any particular item of Collateral, e.g. to deliver or establish the Collateral Agent's control over any particular item of Collateral or otherwise ensure the perfection and priority of the Collateral Agent's security interest to the extent specified therein, then such item of Collateral shall no longer be counted towards the aggregate permitted amounts set forth therein):

4.1. [Reserved].

4.2. Delivery and Control of Instruments, Chattel Paper, Negotiable Documents and Investment Property. (a) If any of the Collateral the fair market value of which is in excess of $5,000,000 individually, or $10,000,000 in the aggregate, is or shall become evidenced or represented by any Instrument, Certificated Security, Negotiable Document or Tangible Chattel Paper, such Instrument (other than checks received in the ordinary course of business), Certificated Security, Negotiable Document or Tangible Chattel Paper shall be promptly delivered to the Collateral Agent (subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement), duly endorsed in a manner reasonably satisfactory to the Collateral Agent, to be held as Collateral pursuant to this Agreement.

(a) If any of the Collateral the fair market value of which is in excess of $5,000,000 individually, or $10,000,000 in the aggregate, is or shall become "Electronic Chattel Paper", subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement, such Grantor shall ensure that (i) a single authoritative copy exists which is unique, identifiable, unalterable (except as provided in clauses (iii), (iv) and (v) of this paragraph), (ii) that such authoritative copy identifies the Collateral Agent as the assignee and is communicated

to and maintained by the Collateral Agent or its designee, (iii) that copies or revisions that add or change the assignee of the authoritative copy can only be made with the written consent of the Collateral Agent, (iv) that each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy and not the authoritative copy and (v) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

(b) If any of the Collateral the fair market value of which is in excess of $5,000,000, individually or $10,000,000, in the aggregate is or shall become evidenced or represented by an Uncertificated Security, subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement, such Grantor shall cause the Issuer thereof either (i) to register the Collateral Agent as the registered owner of such Uncertificated Security, upon original issue or registration of transfer or (ii) to agree in writing with such Grantor and the Collateral Agent that such Issuer will comply with instructions with respect to such Uncertificated Security originated by the Collateral Agent without further consent of such Grantor, such agreement to be in a form reasonably acceptable to the Collateral Agent.

(c) [Reserved].

(d) If any of the Collateral is or shall become evidenced or represented by a Commodity Contract with a value in excess of $5,000,000 individually, or $10,000,000 in the aggregate, if requested by the Collateral Agent in writing or upon the direction of the Authorized Representative or Authorized Representatives representing the Required Secured Parties, in each case, subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement, as applicable, each Grantor shall use commercially reasonable efforts to cause the Commodity Intermediary with respect to such Commodity Contract to agree in writing with such Grantor and the Collateral Agent that such Commodity Intermediary will apply any value distributed on account of such Commodity Contract as directed by the Collateral Agent without further consent of such Grantor, such agreement to be in a form reasonably acceptable to the Collateral Agent.

4.3. Maintenance of Insurance. (a) Such Grantor will maintain, with financially sound and reputable insurance companies, insurance on the Collateral in at least such amounts and against at least such risks as are usually insured against in the same or similar locations by companies engaged in the same or a similar business; and furnish to the Collateral Agent with copies for each Secured Party, upon written request by the Collateral Agent or upon the direction of the Authorized Representative or Authorized Representatives representing the Required Secured Parties, full information as to the insurance carried; provided that, notwithstanding the foregoing, satellite insurance shall not be required. All insurance shall provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 15 days after receipt by the Collateral Agent of written notice thereof.

(a) Such Grantor shall deliver to the Collateral Agent on behalf of the Secured Parties, (i) on the date hereof, a certificate dated such date showing the amount and types of insurance coverage as of such date, (ii) upon request of any Secured Party from time to time, full information as to the insurance carried, (iii) promptly following receipt of notice from any insurer, a copy of any notice of cancellation or material change in coverage from that existing on

the Closing Date, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by such Grantor, and (v) promptly after such information is available to such Grantor, full information as to any claim for an amount in excess of $7,500,000 with respect to any property and casualty insurance policy maintained by such Grantor. The Collateral Agent for the benefit of the Secured Parties shall be named as additional insured on all such liability insurance policies of such Grantor and the Collateral Agent shall be named as loss payee on all property and casualty insurance policies of such Grantor; provided that such Grantor shall only be required to use its best efforts to cause the Collateral Agent to be named as additional insured or loss payee, as applicable, in accordance with this clause (b), on insurance policies obtained after the date hereof and prior to the amendment or Refinancing of the MSSFI Credit Agreement to the extent the insurance provider on such policy refuses to name more than one additional insured or loss payee, as applicable, on such insurance policy.

4.4. [Reserved].

4.5. Maintenance of Perfected Security Interest; Further Documentation. (a) Such Grantor shall maintain the security interest created by this Agreement and any Supplemental Collateral Agreement as a perfected security interest having at least the priority described in Section 3.3 and shall defend such security interest against the claims and demands of all Persons whomsoever subject to Permitted Liens.

(a) Such Grantor will furnish to the Secured Parties from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the assets and property of such Grantor as the Collateral Agent may reasonably request, all in reasonable detail.

(b) At any time and from time to time, including upon the written request of the Collateral Agent or, upon and during the effectiveness of the Refinancing Intercreditor Agreement, the Applicable Authorized Representative, and at the sole expense of such Grantor, such Grantor will promptly and duly authorize, execute and deliver, and have recorded, such further instruments and documents and take such further actions for the purpose of obtaining or preserving the full benefits of this Agreement and any Supplemental Collateral Agreement and of the rights and powers herein or therein granted, including, without limitation, (i) the filing of any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby, (ii) the filing of security agreements or other documents with the United States Patent & Trademark Office, the United States Copyright Office and the office of any similar registries, and (iii) and in the case of Investment Property, and any other relevant Collateral, taking any actions necessary to enable the Collateral Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto, subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement.

4.6. Changes in Locations, Name, Jurisdiction of Incorporation, etc. Such Grantor will not, except upon 15 days' prior written notice to the Collateral Agent and delivery to the Collateral Agent of duly authorized and, where required, executed copies of all additional financing statements and other documents to maintain the validity, perfection and priority of the security interests provided for herein:

(i) [Reserved];

(ii) without limiting the prohibitions on mergers involving the Grantors contained in the Indenture or any Additional Secured Debt Document, change its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business from that referred to in Section 3.4; or

(iii) change its legal name, identity or structure to such an extent that any financing statement filed by the Collateral Agent in connection with this Agreement would become misleading.

4.7. Notices. Such Grantor will advise the Secured Parties promptly, in reasonable detail, of:

(a) any Lien with respect to an obligation in excess of $2,000,000 (other than any Permitted Lien) on any of the Collateral;

(b) of the occurrence of any other event which could reasonably be expected to have a Material Adverse Effect on the aggregate value of the Collateral or on the security interests created hereby; and

(c) any Governmental Authority becoming party to any Material Contract, which notice shall be delivered not more than 15 days from such occurrence thereof.

4.8. Investment Property. (a) If such Grantor shall become entitled to receive or shall receive any stock or other ownership certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Equity Interests (including any Pledged Equity Interest) of any Issuer that is a Subsidiary, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of or other ownership interests in the Pledged Securities, or otherwise in respect thereof, subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement, such Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust for the Secured Parties and deliver the same forthwith to the Collateral Agent in the exact form received, duly endorsed by such Grantor to the Collateral Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with, if the Collateral Agent so requests, signature guaranteed, to be held by the Collateral Agent, subject to the terms hereof, as additional collateral security for the Secured Obligations. Subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement, any sums paid upon or in respect of the Pledged Securities upon the liquidation or dissolution of any Issuer shall be paid over to the Collateral Agent to be held by it hereunder as additional collateral security for the Secured Obligations, and in case any distribution of capital shall be made on or in respect of the Pledged Securities or any property shall be distributed upon or with respect to the Pledged Securities pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Collateral Agent, be delivered to the Collateral Agent to be held by it hereunder as additional

collateral security for the Secured Obligations. If any sums of money or property so paid or distributed in respect of the Pledged Securities in excess of $1,000,000 shall be received by such Grantor, subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement, such Grantor shall, until such money or property is paid or delivered to the Collateral Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Secured Obligations.

(a) Without the prior written consent of the Collateral Agent, such Grantor will not (i) Dispose of, or grant any option with respect to, any of the Investment Property or Proceeds thereof or any interest therein (except, in each case, pursuant to a transaction permitted by the Indenture Documents and each Additional Secured Debt Documents), (ii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for the security interests created by this Agreement, the security interest in favor of MSSFI granted under the MSSFI Collateral Agreement, non-consensual Liens arising by operation of law or any security interest permitted in accordance with the terms of, and governed by, the Refinancing Intercreditor Agreement, (iii) except as otherwise expressly permitted by the Indenture Documents and each Additional Secured Debt Document, enter into any agreement or undertaking restricting the right or ability of such Grantor or the Collateral Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof or any interest therein or (iv) with respect to any Issuer that is a Subsidiary of a Grantor, without the prior written consent of the Collateral Agent, cause or permit such Issuer of any Pledged Partnership Interests or Pledged LLC Interests which are not securities (for purposes of the New York UCC or the UCC applicable in any relevant jurisdiction) on the date hereof to elect or otherwise take any action to cause such Pledged Partnership Interests or Pledged LLC Interests to be treated as securities for purposes of the New York UCC or the UCC applicable in any relevant jurisdiction; provided, however, notwithstanding the foregoing, if such Issuer of any Pledged Partnership Interests or Pledged LLC Interests takes any such action in violation of the foregoing in this clause (iv), such Grantor shall promptly notify the Collateral Agent in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish the Collateral Agent's "control" thereof, subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement.

(b) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Pledged Securities issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Collateral Agent promptly in writing of the occurrence of any of the events described in Section 4.8(a) with respect to the Pledged Securities issued by it and (iii) the terms of Sections 5.3(c) and 5.7 shall apply to it, mutatis mutandis, with respect to all actions that may be required of it pursuant to Section 5.3(c) or 5.7 with respect to the Pledged Securities issued by it. In addition, each Grantor which is either an Issuer or an owner of any Pledged Security hereby consents to the grant by each other Grantor of the security interest hereunder in favor of the Collateral Agent and to the transfer of any Pledged Security to the Collateral Agent or its nominee following an Event of Default and to the substitution of the Collateral Agent or its nominee as a partner, member or shareholder of the related Issuer (subject to Section 7.19 hereof and subject to the terms of the Refinancing Intercreditor Agreement).

4.9. Accounts. (a) Other than in the ordinary course of business, and consistent with its current practices and in accordance with prudent and standard practices used in the industry in which such Grantor is engaged, and so long as no Event of Default shall have occurred and be continuing, such Grantor will not (i) grant any extension of the time of payment of any Accounts Receivable, (ii) compromise or settle any Accounts Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Accounts Receivable, (iv) allow any credit or discount whatsoever on any Accounts Receivable or (v) amend, supplement or modify any Accounts Receivable in any manner that could adversely affect the value thereof, in each case, if any such Accounts individually have a value in excess of $1,000,000, and in each case, solely to the extent such Accounts Receivable constitute Collateral in accordance with the terms hereof or any Supplemental Collateral Agreement.

(a) Such Grantor will deliver prompt notice to the Collateral Agent a copy of any legal claim filed against it with respect to the validity or enforceability of more than 5% of the aggregate amount of the then outstanding Accounts to the extent such Accounts constitute Collateral upon and after delivery of a Supplemental Collateral Agreement with respect thereto.

4.10. [Reserved].

4.11. Intellectual Property. (a) Except where the failure to take such action could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, such Grantor (either itself or through licensees) will (i) continue to use each material Trademark owned by such Grantor on each and every trademark class of goods applicable to its current line as reflected in its current catalogs, brochures and price lists in order to maintain such Trademark in full force free from any claim of abandonment for non-use, (ii) maintain as in the past the quality of products and services offered under such Trademark and take all necessary steps to ensure that all licensed users of such Trademark maintain as in the past such quality, (iii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (iv) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Collateral Agent, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such mark pursuant to this Agreement and the Intellectual Property Security Agreement, and (v) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way.

(a) Such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any material Patent owned by such Grantor may become forfeited, abandoned or dedicated to the public, except where such forfeiture, abandonment or dedication could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Except where the failure to take such action could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, such Grantor (either itself or through licensees) (i) will employ each material Copyright owned by such Grantor, and (ii) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any such Copyright may become invalidated or otherwise impaired or placed into the public domain.

(c) Such Grantor (either itself or through licensees) will not do any act that infringes, misappropriates or violates the Intellectual Property rights of any other Person, except, where any such infringement, misappropriation or violation could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) Such Grantor (either itself or through licensees) will use proper statutory notice in connection with the use of each material Patent, Trademark and Copyright owned by such Grantor, except where the failure to use such notice could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) Such Grantor will notify the Secured Parties immediately if it knows, or has reason to know, that any application or registration relating to any Intellectual Property owned by such Grantor may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's registration or ownership of, or the validity or enforceability of, any such Intellectual Property or such Grantor's right to register the same or to own and maintain the same.

(f) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report all such filings to the Collateral Agent annually (and, in any event within 90 days after the end of each fiscal year of the Company). Upon request of the Collateral Agent or, upon and during the effectiveness of the Refinancing Intercreditor Agreement, the Applicable Authorized Representative, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Collateral Agent or the Applicable Authorized Representative may so request to evidence the Secured Parties' security interest in any Copyright, Patent, Trademark or other Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(g) Except where the failure to take such action could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and each registration of material Intellectual Property owned by such Grantor, including, without limitation, the payment of required fees and taxes, the filing of responses to office actions issued by the United States Patent and Trademark Office and the United States Copyright Office, the filing of applications for renewal or extension, the filing of affidavits of use and affidavits of incontestability, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

(h) Such Grantor (either itself or through licensees) will not, without the prior written consent of the Collateral Agent, discontinue use of, cancel, or otherwise abandon any Intellectual Property owned by such Grantor, or abandon any application or any right to file an application for any Patent, Trademark, or Copyright, unless such Grantor shall have previously determined that such use or the maintenance of such Intellectual Property is no longer desirable in the conduct of such Grantor's business and that the loss thereof could not reasonably be expected to have a Material Adverse Effect and, in such case, such Grantor shall give prompt written notice of any such abandonment to the Collateral Agent in accordance herewith.

(i) In the event that any material Intellectual Property owned by any Grantor is infringed, misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Collateral Agent in writing after it learns thereof and, in its reasonable business judgment, sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution, except where such infringement, misappropriation or dilution could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect,.

(j) Such Grantor agrees that, should it create, develop, or otherwise acquire or obtain an ownership interest in any item of material Intellectual Property which is not now a part of the Collateral (the "After-Acquired Intellectual Property"), (i) the provisions of Section 2 shall automatically apply thereto, (ii) any such After-Acquired Intellectual Property, and in the case of Trademarks, the goodwill of the business connected therewith or symbolized thereby, shall automatically become part of the Collateral, and (iii) it shall provide the Collateral Agent annually (and, in any event within 90 days after the end of each fiscal year of the Company) with an amended Schedule 6 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time) hereto and take the actions specified in 4.11(l).

(k) Such Grantor agrees to execute short form security agreements with respect to Intellectual Property owned or held by such Grantor and with respect to any After-Acquired Intellectual Property in substantially the form of Exhibits B and C in order to record the security interest granted herein to the Collateral Agent for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office, the United States Copyright Office, and any other applicable Governmental Authority.

(l) Such Grantor shall take all steps reasonably necessary consistent with industry standards to protect the confidentiality of all Trade Secrets used or held in its business, including, without limitation, entering into confidentiality agreements with employees and labeling and restricting access to confidential and proprietary information and documents.

4.12. Satellites. (a) Such Grantor will, and will cause each of its Restricted Subsidiaries to, at such Grantor's expense, promptly following the request of the Collateral Agent (which may only be made following the occurrence and during the continuance of an Event of Default), (i) deliver to the Collateral Agent, subject to having obtained any consent or approval of, or registration or filing with, any Governmental Authority for such delivery, all access codes, command codes and command encryption necessary to establish access to and

perform tracking, telemetry, control and monitoring of any Satellite, including activation and control of any spacecraft subsystems and payload components and the transponders thereon (such access codes, command codes and command encryption being collectively referred to as the "Satellite Codes"), in each case where such Satellite Codes are in possession, or subject to the control, of such Grantor or any Restricted Subsidiary, (ii) use its reasonable best efforts to obtain any consent or approval of, or registration or filing with, any Governmental Authority referred to in clause (i) above or otherwise required to effect any transfer of operational control over any Satellite and related technical data (including any license approving the export or re-export of such Satellite to any Person as designated by the Collateral Agent) and (iii) deliver to the Collateral Agent written evidence of the issuance of any such consent, approval, registration or filing once such consent, approval, registration or filing has been obtained.

(b) Such Grantor will, and will cause each of its Restricted Subsidiaries to, at such Grantor's expense, promptly following the request of the Collateral Agent (which may only be made following the occurrence and during the continuance of an Event of Default), use its reasonable best efforts to obtain from each provider (other than the Company or any Restricted Subsidiary) of tracking, telemetry, control and monitoring services for any Satellite, an agreement of such provider with the Collateral Agent (i) to deliver to the Collateral Agent, promptly following notification by the Collateral Agent that an Event of Default has occurred and is continuing, subject to having obtained any consent or approval of, or registration or filing with, any Governmental Authority for such delivery, all Satellite Codes in possession, or subject to the control, of such provider and, following delivery thereof, not change any such Satellite Codes without promptly furnishing to the Collateral Agent the new Satellite Codes, (ii) to use its reasonable best efforts, upon notification by the Collateral Agent that an Event of Default has occurred and is continuing, to obtain any consent or approval of, or registration or filing with, any Governmental Authority referred to in clause (i) above or otherwise required to effect any transfer of operational control over any Satellite for which such provider is providing any of the abovementioned services and related technical data and (iii) to deliver to the Collateral Agent written evidence of the issuance of any such consent, approval, registration or filing once such consent, approval, registration or filing has been obtained. If, notwithstanding such Grantor's and its Restricted Subsidiaries' having used their reasonable best efforts to obtain the agreements referred to in this paragraph, any such agreement shall not have been so obtained, such Grantor shall, and shall cause its Restricted Subsidiaries to, instruct each such provider of tracking, telemetry, control and monitoring services (and each manufacturer of any Satellite that has not yet been launched) to cooperate in providing the Satellite Codes, consents, approvals, registrations and filings referred to in this paragraph.

(c) In the event that the United States signs and ratifies the Protocol on Space Assets to the Capetown Convention on Mobile Equipment, then each Grantor shall ensure that any international interests (as defined in such Convention) with respect to space assets (as defined in such Protocol) are properly registered with the international registry referred to therein and shall otherwise take all actions reasonably requested by the Collateral Agent to ensure that the security interest of the Collateral Agent is fully perfected and protected under such Protocol and such Convention.

4.13. Further Covenants.

(a) Such Grantor shall not use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(b) such Grantor shall make payment of (i) all taxes, assessments, license fees, levies and other charges of Governmental Authorities imposed upon it which if unpaid, would be reasonably likely to become a Lien on the Collateral that is not a Permitted Lien, and (ii) all claims (including, without limitation, claims for labor, services, materials and supplies) for sums; and

(c) upon such Grantor or any officer of such Grantor obtaining knowledge thereof, it shall promptly notify Collateral Agent in writing of the levy of any legal process against the Collateral or any portion thereof.

4.14. Additional Secured Debt. On or prior to (a) the date on which any Refinanced Term Credit Agreement is entered into or the MSSFI Credit Agreement is otherwise amended, modified or replaced or (b) the date on which any other Additional Secured Debt Documents is executed or and any other Additional Secured Debt contemplated thereby is incurred, the Grantors shall (i) cause the Refinanced Term Agent or the Authorized Representative for any other Additional Secured Debtholders, as the case may be, to enter into the Refinancing Intercreditor Agreement, (ii) enter into a Supplemental Collateral Agreement or other Security Document, pursuant to which the Grantors shall grant to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in any assets or property of the Grantors not otherwise granted pursuant to this Agreement or any other Indenture Document prior to such date, to the extent the Grantors grant a security interest in such other assets to the Refinanced Term Agent, the Authorized Representative, or any other Additional Secured Debtholders, as the case may be, and which Supplemental Collateral Agreement or other Security Document shall contain such additional customary covenants, representations, conditions (including the delivery of legal opinions) and other provisions relating to such additional assets or the granting of such security interest, in each case, as the Collateral Agent may reasonably request and (iii) enter into and file such other agreements, amendments, financing statements or other documents as the Collateral Agent shall reasonably request in furtherance of the foregoing or as are necessary in order to comply with the requirements of this Agreement (including Section 4.5) and any Supplemental Collateral Agreement.

SECTION 5. REMEDIAL PROVISIONS

5.1. Certain Matters Relating to Accounts. (a) [Reserved].

(a) If and to the extent Accounts constitute Collateral pursuant to the terms hereof or any Supplemental Collateral Agreement, the Collateral Agent hereby authorizes each Grantor to collect such Grantor's Accounts and each Grantor hereby agrees to continue to collect all amounts due or to become due to such Grantor under the Accounts and any Supporting Obligation and diligently exercise each material right it may have under any Account and any Supporting Obligation, in each case, at its own expense; provided, however, that, subject to Section 7.19, the Collateral Agent may curtail or terminate said authority at any time after the occurrence and during the continuance of an Event of Default. If and to the extent Accounts

constitute Collateral pursuant to the terms hereof or any Supplemental Collateral Agreement, if required by the Collateral Agent at any time after the occurrence and during the continuance of an Event of Default, subject to Section 7.19, any payments of Accounts, when collected by any Grantor, (i) shall be forthwith (and, in any event, within two Business Days) deposited by such Grantor in the exact form received, duly endorsed by such Grantor to the Collateral Agent if required, in a Collateral Account maintained under the sole dominion and control of the Collateral Agent, subject to withdrawal by the Collateral Agent for the account of the Secured Parties only as provided in Section 5.5, and (ii) until so turned over, shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor. Each such deposit of Proceeds of Accounts shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(b) [Reserved].

5.2. Communications with Obligors; Grantors Remain Liable If and to the extent Accounts constitute Collateral pursuant to the terms hereof or any Supplemental Collateral Agreement:

(a) subject to Section 7.19, the Collateral Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under any Accounts with a value in excess of $1,000,000, and parties to the Contracts to verify with them to the Collateral Agent's satisfaction the existence, amount and terms of any such Accounts or such Contracts;

(b) subject to Section 7.19, after the occurrence and during the continuance of an Event of Default, the Collateral Agent may upon written notice to the applicable Grantor, notify, or require any Grantor to notify, the Account Debtor or counterparty to make all payments under the Accounts and/or Contracts directly to the Collateral Agent; and

(c) anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Accounts and Contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto.

5.3. Pledged Securities.

(a) Unless an Event of Default shall have occurred and be continuing and the Collateral Agent shall have given notice to the relevant Grantor of the Collateral Agent's intent to exercise its corresponding rights pursuant to Section 5.3(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Equity Interests and all payments made in respect of the Pledged Notes, in each case paid in the normal course of business of the relevant Issuer and consistent with past practice, to the extent permitted in the Indenture Documents and any Additional Secured Debt Documents, and to exercise all voting and corporate rights with respect to the Pledged Securities; provided, however, that no vote shall be cast or corporate or other ownership right exercised or other action taken which would materially impair the Collateral or which would result in any violation of any provision of this Agreement, any other Indenture Documents or any Additional Secured Debt Documents.

(b) If an Event of Default shall occur and be continuing: (i) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right, but shall be under no obligation, to exercise or refrain from exercising such voting and other consensual rights and (ii) the Collateral Agent shall have the right, without notice to any Grantor, to transfer all or any portion of the Investment Property to its name or the name of its nominee or agent. In addition, the Collateral Agent shall have the right at any time, without notice to any Grantor, to exchange any certificates or instruments representing any Investment Property for certificates or instruments of smaller or larger denominations. In order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and each Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth herein.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Pledged Securities pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Collateral Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, if an Event of Default shall have occurred and be continuing, pay any dividends or other payments with respect to the Pledged Securities directly to the Collateral Agent.

5.4. Proceeds to be Turned Over To Collateral Agent (a) In addition to the rights of the Secured Parties specified in Section 5.1 with respect to payments of Accounts, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, Temporary Cash Investments, checks and other near-cash items shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Collateral Agent in the exact form received by such Grantor (duly endorsed by such Grantor to the Collateral Agent, if required). All Proceeds received by the Collateral Agent hereunder shall be held by the Collateral Agent in a Collateral Account maintained under its sole dominion and control. All Proceeds while held by the Collateral Agent in a Collateral Account (or by such Grantor in trust for the Secured Parties) shall continue to be held as collateral security for all the Secured Obligations and shall not constitute payment thereof until applied as provided in Section 5.5.

(b) If any Event of Default shall occur and be continuing, upon the request of the Collateral Agent, the Company and any Guarantor shall immediately take all actions necessary or desirable to enable the Collateral Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect to any Investment Property, Deposit Accounts (if and to the extent such Deposit Accounts constitute Collateral pursuant to the terms hereof or any Supplemental Collateral Agreement) and any other relevant Collateral, including without limitation, executing and delivering and causing the relevant depositary bank or

securities intermediary to execute and deliver a control agreement in a form satisfactory to the Collateral Agent in its sole discretion.

5.5. Application of Proceeds. If an Event of Default shall have occurred and be continuing, at any time at the Collateral Agent's election, the Collateral Agent shall apply all or any part of the net Proceeds (after deducting fees and expenses as provided in Section 5.6) constituting Collateral realized through the exercise by the Collateral Agent of its remedies hereunder, whether or not held in any Collateral Account, and any proceeds of the guarantee set forth in the Indenture and any Additional Secured Debt Document, in payment of the Secured Obligations in such order of application as is required by the Indenture or, upon and during the effectiveness of the Refinancing Intercreditor Agreement, the Refinancing Intercreditor Agreement.

5.6. Code and Other Remedies. (a) If an Event of Default shall occur and be continuing, the Collateral Agent may take all such actions and exercise all such rights and remedies set forth in this clause (a). The Collateral Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the New York UCC (whether or not the New York UCC applies to the affected Collateral) or its rights under any other applicable law or in equity. Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith Dispose of or give option or options to purchase and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent 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. Each

Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to Dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree (it being understood and agreed that the Collateral Agent or any Secured Party may bid at a private sale only if permitted by Section 9-610(c)(2) of the New York UCC and Grantor reserves the right to object to commercial reasonableness of any private sale if buyer at such private sale is the Collateral Agent or a Secured Party). Each Grantor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at places which the Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Collateral Agent shall have the right to enter onto the property where any Collateral is located and take possession thereof with or without judicial process.

(a) The Collateral Agent shall apply the net proceeds of any action taken by it pursuant to this Section 5.6, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations as set forth in Section 5.5 and only after such application and after the payment by the Collateral Agent of any other amount required by any provision of law, including, without limitation, Section 9-615(a) of the New York UCC, need the Collateral Agent account for the surplus, if any, to any Grantor. If the Collateral Agent sells any of the Collateral upon credit, the Grantor will be credited only with payments actually made by purchaser and received by the Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and the Grantor shall be credited with proceeds of the sale. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against any Secured Party arising out of the exercise by any of them of any rights hereunder.

(b) In the event of any Disposition of any of the Intellectual Property, the goodwill of the business connected with and symbolized by any Trademarks subject to such Disposition shall be included, and the applicable Grantor shall supply the Collateral Agent or its designee with such Grantor's know-how and expertise, and with documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Intellectual Property subject to such Disposition, and such Grantor's customer lists and other records and documents relating to such Intellectual Property and to the manufacture, distribution, advertising and sale of such products and services.

5.7. Registration Rights. (a) Subject to the terms of the Refinancing Intercreditor Agreement, if applicable, if the Collateral Agent shall determine to exercise its right to sell any or all of the Pledged Equity Interests or the Pledged Debt Securities pursuant to Section 5.6, and the Required Secured Parties direct the Collateral Agent, to have the Pledged Equity Interests or the Pledged Debt Securities, or that portion thereof to be sold, registered

under the provisions of the Securities Act, the relevant Grantor will cause the Issuer thereof (if such Issuer is a direct or indirect wholly-owned Subsidiary of the Issuer) to (i) execute and deliver, and cause the directors and officers of such Issuer to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts as may be necessary to register the Pledged Equity Interests or the Pledged Debt Securities, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its best efforts to cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Equity Interests or the Pledged Debt Securities, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which are necessary, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto. Each Grantor agrees to cause such Issuer to comply with the provisions of the securities or "Blue Sky" laws of any and all jurisdictions as required by the sale to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.

(a) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Equity Interests or the Pledged Debt Securities, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Equity Interests or the Pledged Debt Securities for the period of time necessary to permit the Issuer thereof (is such Issuer is a direct or indirect wholly-owned Subsidiary of the Issuer) to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(b) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Equity Interests or the Pledged Debt Securities pursuant to this Section 5.7 valid and binding and in compliance with any and all other applicable Requirements of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 5.7 will cause irreparable injury to the Secured Parties, that the Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 5.7 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Indenture or any Additional Secured Debt Document, as applicable, or a defense of payment.

5.8. Waiver; Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other Disposition of the Collateral are insufficient to pay its Secured Obligations and the fees and disbursements of any attorneys employed by any Secured Party to collect such deficiency. Each Grantor hereby expressly waives and covenants not to assert any

appraisement, valuation, extension, redemption or similar laws, now or at any time hereafter in force, which delay, prevent or otherwise impede the performance or enforcement of this Agreement.

5.9. FCC Licenses. Notwithstanding anything to the contrary contained in this Agreement, the Indenture Documents, any Additional Secured Debt Document or in any other agreement, instrument or document executed by any Grantor in connection with the Indenture Documents or any Additional Secured Debt Document, to the extent that any FCC License is included in the Collateral, the Collateral Agent will not take any action pursuant to any document referred to above which would constitute or result in any assignment of any FCC License or any change of control (whether de jure or de facto) of any Grantor or Subsidiary of any Grantor if such assignment of any FCC License or change of control would require, under then existing law, the prior approval of the FCC without first obtaining such prior approval of the FCC. Upon the occurrence and during the continuance of an Event of Default, subject to terms and conditions of this Agreement, each Grantor agrees to take any action that the Collateral Agent may reasonably request in order to obtain from the FCC such approval as may be necessary to enable the Collateral Agent to exercise and enjoy the full rights and benefits granted to the Collateral Agent by this Agreement and the other documents referred to above, including specifically, at the cost and expense of each Grantor, the use of its best efforts to assist in obtaining approval of the FCC for any action or transaction contemplated by this Agreement for which such approval is or shall be required by law, and specifically, without limitation, upon request, to prepare, sign and file with the FCC the assignor's or transferor's portion of any application or applications for consent to the assignment of license or transfer of control necessary or appropriate under the FCC's rules and regulations for approval of (i) any sale or other disposition of the Collateral by or on behalf of the Collateral Agent, or (ii) any assumption by the Collateral Agent of voting rights in the Collateral effected in accordance with the terms of this Agreement. It is understood and agreed that all foreclosure and related actions will be made in accordance with the Communications Act of 1934, as amended from time to time, and other applicable FCC regulations and published policies and decisions.

5.10. Voting.

(a) The provisions of this Section 5.10 shall apply solely after incurrence of the Additional Secured Obligations. The provisions of the Indenture shall apply prior to the incurrence of any such Additional Secured Obligations.

(b) Subject to the Refinancing Intercreditor Agreement, if applicable, the Required Secured Parties shall have the right to direct the Collateral Agent, following the occurrence of an Event of Default which is continuing, to foreclose on, or exercise its other rights with respect to, the Collateral (or exercise other remedies with respect to the Collateral). For the purposes of determining the Required Secured Parties and their directions in accordance with this Section, each Secured Party or its Authorized Representative shall provide to the Collateral Agent certificates, in form and substance reasonably satisfactory to the Collateral Agent, setting forth the respective amounts of outstanding principal obligations owing to such Secured Parties and their direction or vote and the Collateral Agent shall be fully entitled to rely on such certificates.

(c) Any action taken or not taken without the vote of any Secured Party or Secured Parties under this Section 5.10 shall nevertheless be binding on such Secured Party or Secured Parties.

(d) In the case of an Event of Default which is continuing, the Collateral Agent will be permitted, subject to applicable law and to the terms of the Refinancing Intercreditor Agreement, if applicable, to exercise remedies and sell the Collateral under this Agreement at the direction of the Required Secured Parties. If the Collateral Agent has asked the Secured Parties for instruction and the applicable Secured Parties have not yet responded to such request, the Collateral Agent shall be authorized to take, but shall not be required to take, and shall in no event have any liability for the taking, any delay in taking or the failure to take, such actions with regard to a Default or Event of Default which is continuing which the Collateral Agent, in good faith, believes to be reasonably required to promote and protect the interests of the Secured Parties and to preserve the value of the Collateral and shall give the Secured Parties appropriate notice of such action; provided that once instructions with respect to such request have been received by the Collateral Agent from the applicable Secured Parties, the actions of the Collateral Agent shall be governed thereby and the Collateral Agent shall not take any further action which would be contrary thereto.

5.11. Exercise of Remedies Generally. Notwithstanding anything to the contrary contained herein, nothing in the MSSFI Credit Agreement, the MSSFI Collateral Agreement or any other document relating thereto shall prohibit or otherwise restrict, the Collateral Agent's or Secured Parties' rights set forth in this Section 5, and the Collateral Agent's or Secured Parties' ability to exercise such rights, shall not be limited or restricted in any manner on account of any rights granted to MSSFI under the MSSFI Credit Agreement or the MSSFI Collateral Agreement.

SECTION 6. THE COLLATERAL AGENT

6.1. Collateral Agent's Appointment as Attorney-in-Fact, etc. (a) Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its 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 which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Collateral Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Account or Contract or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for

the purpose of collecting any and all such moneys due under any Account or Contract or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Collateral Agent may request to evidence the Secured Parties' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 5.6 or 5.7, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate; (7) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Collateral Agent shall in its sole discretion determine; and (8) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and do, at the Collateral Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deems necessary to protect, preserve or realize upon the Collateral and the Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 6.1(a) to the contrary notwithstanding, the Collateral Agent agrees that, except as provided in Section 6.1(b), it will not exercise any rights under the power of attorney provided for in this Section 6.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement; provided, however, that unless an Event of Default has occurred and is continuing or time is of the essence, the Collateral Agent shall not exercise this power without first making demand on the Grantor and the Grantor failing to promptly comply therewith. Notwithstanding the foregoing, the Collateral Agent may not take any of the actions set forth in Sections 5.2(a) and (b) except in compliance with those sections.

(c) The expenses of the Collateral Agent incurred in connection with actions undertaken as provided in this Section 6.1, together with interest, from the date of payment by the Collateral Agent to the date reimbursed by the relevant Grantor, shall promptly be paid by such Grantor to the Collateral Agent.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

6.2. Duty of Collateral Agent. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property for its own account. Neither the Collateral Agent, nor any other Secured Party nor any of their respective officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise Dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Secured Parties hereunder are solely to protect the Secured Parties' interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers (it being understood and agreed that the Secured Parties will have the obligations of a secured party under the New York UCC). The Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be responsible to any Grantor for any act or failure to act hereunder, except to the extent that any such act or failure to act is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from their own gross negligence or willful misconduct in breach of a duty owed to such Grantor.

6.3. No Duty of the Collateral Agent. The powers conferred on Collateral Agent hereunder are solely to protect the interests of Collateral Agent for the ratable benefit of the Secured Parties in the Collateral and shall not impose any duty upon Collateral Agent to exercise any such powers. Collateral Agent shall be accountable only for 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 any Grantor for any act or failure to act hereunder, except to the extent that any such act or failure to act is found by a final and nonappealable

decision of a court of competent jurisdiction to have resulted solely and proximately from their own gross negligence or willful misconduct. No provision of this Agreement shall require Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

6.4. Execution of Financing Statements. Each Grantor acknowledges that pursuant to Section 9-509(b) of the New York UCC and any other applicable law, each Grantor authorizes the Collateral Agent to file or record financing or continuation statements, and amendments thereto, and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Collateral Agent reasonably determines appropriate to perfect or maintain the perfection of the security interests of the Collateral Agent under this Agreement. Each Grantor agrees that such financing statements may describe the collateral in the same manner as described in the Security Documents or as "all assets" or "all personal property" of the undersigned, whether now owned or hereafter existing or acquired by the undersigned or such other description as the Collateral Agent, in its sole judgment, determines is necessary or advisable; provided that such financing statements shall exclude any FCC Licenses. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction. Notwithstanding any provision herein to the contrary, the Collateral Agent may, but shall be under no obligation to (except at the direction of the Authorized Representative or Authorized Representatives representing the Required Secured Parties), file or record financing or continuation statements, or amendments thereto, or any other filing or recording document or instrument with respect to the Collateral to perfect or maintain the perfection of the security interests in the Collateral granted under this Agreement.

6.5. Authority of Collateral Agent. Each Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the Refinancing Intercreditor Agreement, to the extent then in effect, and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Grantors, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

6.6. Appointment of Co-Collateral Agents. At any time or from time to time, in order to comply with any Requirement of Law, the Collateral Agent may appoint another bank or trust company or one of more other persons, either to act as co-agent or, with the consent of the Company, as agents on behalf of the Secured Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and which may be specified in the instrument of appointment (which may, in the discretion of the Collateral Agent, include provisions for indemnification and similar protections of such co-agent or separate agent).

6.7. Applicable Authorized Representative. Notwithstanding anything to the contrary herein and for the avoidance of doubt, the rights, duties and obligations of the Collateral Agent hereunder shall be subject to the terms of the Refinancing Intercreditor Agreement, to the extent in effect, and any rights, duties and obligations of the Applicable Authorized Representative (as defined in the Refinancing Intercreditor Agreement) thereunder.

SECTION 7. MISCELLANEOUS

7.1. Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by each affected Grantor, and the Collateral Agent or, upon and during the effectiveness of the Refinancing Intercreditor Agreement, the Applicable Authorized Representative, and such other parties as shall be required in accordance with the terms of the Refinancing Intercreditor Agreement, as applicable, and (ii) the Company may amend any Schedule referred to herein after the date hereof to reflect any change in facts after the date hereof if necessary in connection with the making of any representation set forth herein, provided the Company delivers such revised Schedule to the Collateral Agent and any applicable Authorized Representative promptly following such revision.

7.2. Notices. All notices, requests and demands to or upon the Collateral Agent or any Grantor hereunder shall be effected in the manner provided for in Section 12.01 of the Indenture; provided that any such notice, request or demand to or upon any Grantor shall be addressed to such Grantor at its notice address set forth on Schedule 1 (as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time).

7.3. No Waiver by Course of Conduct; Cumulative Remedies. No Secured Party shall by any act (except by a written instrument pursuant to Section 7.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

7.4. Enforcement Expenses; Indemnification. (a) Each Grantor agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against such Grantor under the guarantee pursuant to the Indenture or otherwise enforcing or preserving any rights under this Agreement and the other Indenture Documents to which such Grantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party.

(a) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to

any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(b) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Company would be required to do so pursuant to Section 7.07 of the Indenture.

(c) The agreements in this Section shall survive repayment of the Secured Obligations and all other amounts payable under the Indenture and the other Indenture Documents.

(d) Each Grantor agrees that the provisions of Section 7.07 of the Indenture are hereby incorporated herein by reference, mutatis mutandis, and each Secured Party shall be entitled to rely on each of them as if they were fully set forth herein.

7.5. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Secured Parties and their successors and assigns; provided that, except in connection with the Company-XM Merger or the Company-XM Holdings Merger, no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent and any such assignment, transfer or delegation without such consent shall be null and void.

7.6. Set-Off. Subject to the requirements of the Refinancing Intercreditor Agreement, each Grantor hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of such Grantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of such Grantor to such Secured Party hereunder and claims of every nature and description of such Secured Party against such Grantor, in any currency, whether arising hereunder, under the Indenture, any other Indenture Document, any Additional Debt Document or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall notify such Grantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

7.7. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

7.8. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7.9. Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

7.10. Integration. This Agreement and the other Collateral Documents represent the agreement of the Grantors, the Collateral Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Collateral Documents.

7.11. **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

7.12. Submission to Jurisdiction; Waivers. Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Collateral Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Grantor at its address referred to in Section 7.2 or at such other address of which the Collateral Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

7.13. Acknowledgments. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Collateral Documents to which it is a party;

(b) no Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Collateral Documents, and the relationship between the Grantors, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Collateral Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Secured Parties.

7.14. Additional Grantors. Each Subsidiary of the Company that is required to become a party to this Agreement pursuant to Section 10.06 of the Indenture or any similar provisions of any Additional Debt Document shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption and Joinder Agreement in the form of Exhibit D hereto.

7.15. Additional Secured Obligations. On or after the date hereof and from time to time, upon the compliance by any Additional Secured Debtholder with the terms of Section 5.13 of the Refinancing Intercreditor Agreement and Section 4.14 hereof, the Additional Secured Obligations of such Additional Secured Debtholder shall be deemed to be Additional Secured Obligations hereunder. Each Authorized Representative agrees that upon the satisfaction of the provisions of such Section 5.13 of the Refinancing Intercreditor Agreement and Section 4.14 hereof, the Collateral Agent shall act as agent under and subject to the terms of this Agreement and the Refinancing Intercreditor Agreement for the benefit of all Secured Parties, including any Additional Secured Debtholders that hold any such Additional Secured Obligations, and each Authorized Representative agrees to the appointment, and acceptance of the appointment, of the Collateral Agent as agent for the holders of such Additional Secured Obligations as set forth in the Joinder Agreement, and the Authorized Representative providing such Joinder Agreement shall, on behalf of itself and each Additional Secured Debtholder it represents, be bound by this Agreement. For purposes of this Agreement, all Obligations arising under or in connection with the Notes (including Additional Notes) constitute Note Obligations rather than Additional Secured Obligations; however upon the issuance of Additional Notes, the Company shall deliver to the Collateral Agent a certificate signed by the chief financial officer of the Company setting forth the particulars of the Additional Notes including the aggregate principal amount or face amount thereof and certifying that such issuance of Additional Notes complies with the terms of the Indenture.

7.16. Certain Actions Upon a Company-XM Merger. On the date of any Company-XM Merger, the Grantors shall (a) execute and deliver to the Collateral Agent and the

Secured Parties, and the Collateral Agent and the Secured Parties shall become a party to, the XM Security Documents on terms reasonably acceptable to the Collateral Agent, (b) deliver to the Collateral Agent customary lien searches and (c) execute and deliver all other opinions, documents and instruments, required by law or reasonably requested by the Collateral Agent to be filed, registered, recorded, delivered, executed or possessed in order to create a first-priority perfected lien on the Collateral (subject to Liens which are permitted under the Indenture Documents and the Additional Secured Debt Documents to rank equal or prior to the Liens securing the Secured Obligations). At any time on or after the date of the Company-XM Merger, the Company will, and the Trustee and the Collateral Agent will have the right but not the obligation, file such financing statements and amendments and continuations thereof and take such other actions as required by law or as it deems reasonably necessary to ensure that, as of the date of such Company-XM Merger, the Liens created by the XM Security Documents for the benefit of the holders of the Notes have the same priority as they would have had, had they been executed, and filings in respect thereof had been made, on the date hereof.

7.17. Releases. (a) At such time as the Secured Obligations shall have been paid in full, the commitments (if any) have been terminated or expired and no letters of credit shall be outstanding (or shall have been cash collateralized in an amount equal to 100% of the aggregate face amount plus any accrued and unpaid interest and fees that are expected to be payable until the expiration thereof on a first priority secured basis), the Collateral shall be automatically released from the Liens created hereby, and upon receipt by the Collateral Agent of an officer's certificate stating that the Secured Obligations have been paid in full, the commitments (if any) have been terminated or expired and no letters of credit are outstanding (or shall have been cash collateralized in an amount equal to 100% of the aggregate face amount plus any accrued and unpaid interest and fees that are expected to be payable until the expiration thereof on a first priority secured basis), this Agreement and all obligations (other than those expressly stated to survive such termination) of the Collateral Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, the Collateral Agent shall deliver to such Grantor any Collateral held by the Collateral Agent hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(a) If any of the Collateral shall be Disposed of by any Grantor in a transaction permitted by the Indenture and each Additional Secured Debt Document (other than a transaction in which all or substantially all of the Collateral is Disposed of, even if so permitted by the Indenture and each such Additional Secured Debt Document), the Liens created hereby on such Collateral shall be automatically released. At the request and sole expense of the Company, a Guarantor shall be released from its obligations hereunder in the event that all the Equity Interests of such Guarantor shall be Disposed of in a transaction permitted by the Indenture and each Additional Secured Debt Document.

(b) Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement originally filed in connection herewith without the prior written consent of the Collateral Agent subject to such Grantor's rights under Section 9-509(d)(2) of the New York UCC.

7.18. Effects of Certain Errors or Omissions. Notwithstanding anything to the contrary contained herein, the Company, the Guarantors, the applicable Authorized Representatives and the Collateral Agent may amend this Agreement without the consent of any Secured Party to cure any ambiguity, omission, defect or inconsistency or to make any change that does not adversely affect the rights of any Secured Party and such amendment shall become effective without any further action or consent of the Required Secured Parties.

7.19. MSSFI Collateral Agreement. Notwithstanding anything herein to the contrary, all rights of the Collateral Agent hereunder shall be subject to the terms of the MSSFI Collateral Agreement for so long as such agreement is outstanding, and until the Refinancing, amendment, modification or termination of the MSSFI Credit Agreement, any obligation of any Grantor hereunder or under any other Security Document with respect to the delivery or control of any Collateral shall be deemed to be satisfied if the Grantor complies with the requirements of the relevant provision of the MSSFI Credit Agreement or the MSSFI Collateral Agreement, as applicable.

7.20. **WAIVER OF JURY TRIAL. EACH GRANTOR AND THE COLLATERAL AGENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

IN WITNESS WHEREOF, each of the undersigned has caused this Collateral Agreement to be duly executed and delivered as of the date first above written.

SIRIUS XM RADIO INC.

By: /s/ PATRICK L. DONNELLY
Name: Patrick L. Donnelly
Title: Executive Vice President, General Counsel and Secretary

SATELLITE CD RADIO, INC.

By: /s/ PATRICK L. DONNELLY
Name: Patrick L. Donnelly
Title: Secretary

SIRIUS ASSET MANAGEMENT COMPANY LLC

By: /s/ PATRICK L. DONNELLY
Name: Patrick L. Donnelly
Title: Secretary

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

By: /s/ JEAN CLARKE
Name: Jean Clarke
Title: Assistant Vice President

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ JEAN CLARKE
Name: Jean Clarke
Title: Assistant Vice President

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Mel Karmazin, the Chief Executive Officer of Sirius XM Radio Inc., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Sirius XM Radio Inc. for the period ended September 30, 2009;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any changes in the registrant's internal controls over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Mel Karmazin
Mel Karmazin
Chief Executive Officer
(Principal Executive Officer)

November 5, 2009

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

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

1. I have reviewed this Quarterly Report on Form 10-Q of Sirius XM Radio Inc. for the period ended September 30, 2009;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any changes in the registrant's internal controls over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

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

November 5, 2009

Exhibit 32.1

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 XM Radio Inc. (the "Company") on Form 10-Q for the period ended September 30, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mel Karmazin, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Mel Karmazin
Mel Karmazin
Chief Executive Officer
(Principal Executive Officer)

November 5, 2009

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.

Exhibit 32.2

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 XM Radio Inc. (the "Company") on Form 10-Q for the period ended September 30, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David J. Frear, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

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

November 5, 2009

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.