



Federal Communications Commission
Washington, D.C. 20554

DA 12-717

May 4, 2012

Robert L. Hoegle
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Re: IBFS File Nos. SES-STA-20120320-00280, -00281, and -00282; SAT-STA-20120320-00054, -00055, -00056; Experimental License File Nos. 0007-EX-TC-2012, 0008-EX-TC-2012, 0009-EX-TC-2012

Dear Mr. Hoegle:

On March 20, 2012, Liberty Media Corporation (“Liberty Media”) filed the referenced applications for consent to transfer *de facto* control of Sirius XM Radio Inc. (“Sirius”). For the reasons stated below, we dismiss the applications as unacceptable for filing.

In 2009, Liberty Media acquired series B-1 and B-2 convertible preferred stock in Sirius. The stock is convertible to common stock that would represent an approximate 40 percent voting interest in Sirius. Liberty Media contemporaneously entered an Investment Agreement with Sirius, which, among other things, contained provisions that restricted Liberty Media from taking certain actions with respect to Sirius (the “Restrictions”). On April 20, 2009, Liberty Media filed a letter with the Commission citing the Investment Agreement and the Certificates of Designation relating to the preferred stock, and stating that it would not seek to exercise *de facto* control over Sirius.¹ The Restrictions expired on March 6, 2012.²

Liberty Media’s applications seek approval for a transfer of *de facto* control based upon the expiration of the Restrictions. Liberty Media stated in its applications that Sirius would not provide Liberty Media with its passwords, signatures and other information required to file an electronic transfer of control application.³

¹ See Letter from Robert L. Hoegle, Counsel to Liberty Media Corporation, to John Giusti, Acting Chief, International Bureau, Federal Communications Commission (Apr. 20, 2009) (stating that consistent with the Investment Agreement, Liberty Media “will not exercise *de facto* control over Sirius and ha[s] no intention of doing so.”)

² Letter from Robert L. Hoegle, Counsel to Liberty Media Corporation, to Mindel De La Torre, Chief, International Bureau, Federal Communications Commission (Mar. 6, 2012).

³ Liberty Media filed the referenced IBFS application using the form for a request for special temporary authority, rather than for a transfer of control, and did not request a waiver of section 25.112(a)(1) of the Commission’s rules, which states that an application is unacceptable for filing if “the application is defective with respect to completeness of answers to questions, informational showings, internal inconsistencies, execution, or other matters

On March, 30, 2012, Sirius filed a Petition to Dismiss or Deny Liberty Media's applications stating that there are deficiencies in Liberty Media's applications and with their filing that warrant dismissal. Sirius points to the fact that Liberty Media could not secure the signatures and information needed from Sirius as providing "clear evidence that both a majority of Sirius XM's board of directors and its management dispute Liberty Media's assertion that the expiration of certain provisions of the Investment Agreement ... results in a *de facto* transfer of control of [Sirius]." ⁴ Sirius notes in its Petition that now that the Restrictions have expired there are several actions that Liberty Media could take to move towards gaining *de facto* control of Sirius, but Liberty Media has neither taken those actions nor indicated that it proposes to take those actions. ⁵ On April 12, 2012, Liberty Media filed an Opposition and provided evidence that, based on prior Sirius shareholder voting behavior, if Liberty Media converted its Preferred Stock to Common Stock, Liberty Media's interest would be sufficient to determine the outcome of matters submitted to a shareholder vote. ⁶ On April 20, 2012, Sirius filed a Reply to Liberty Media's Opposition.

We find Liberty Media's applications to be unacceptable for filing because they are defective with respect to "execution" and "other matters of a formal character."⁷ Specifically, Liberty Media was unable to obtain the passwords, signatures, and other necessary information from Sirius to properly file an electronic transfer of control application. Furthermore, we conclude

of a formal character." 47 C.F.R. § 25.112(a)(1). The Experimental Radio Service also has a rule which states that "applications that are defective with respect to completeness of answers to required questions, execution or other matters of a purely formal character may ... be returned to the applicant with a brief statement as to the omissions." 47 C.F.R. § 5.65(a). Liberty Media requested a waiver of this rule in its Experimental License transfer of control applications.

⁴ Sirius Petition to Dismiss or Deny at 1-2.

⁵ *Id.* at 20 ("Liberty Media now *can* enter into or seek to enter into a merger, acquisition, asset sale, or other business combination, *but it has not done so*, nor has it proposed to do so. Liberty Media now *can* seek to control the management, board of directors or policies of Sirius XM, *but it has not done so*, nor has it proposed to do so. And Liberty Media now *can* join a "group" with respect to the voting securities of Sirius XM, call a meeting of the Sirius XM stockholders, initiate a stockholder proposal, or solicit proxies to vote with respect to Sirius XM securities, *but it has not done so*, nor has it proposed to do so.") (emphasis in original).

⁶ Liberty Media also provided documentation related to the 2009 Investment Agreement, including: the Investment Agreement (submitted to the Securities and Exchange Commission as Exhibit to the Sirius Form 10-K for the year ending December 31, 2008), the Certificates of Designation regarding Series B-1 of Preferred Stock issued to Liberty Media, the Certificates of Designation regarding Series B-2 of Preferred Stock issued to Liberty Media, the April 20, 2009 Letter to the Acting Chief, International Bureau, the Amended Certificate of Incorporation of Sirius and the Amended and Restated By-laws of Sirius.

⁷ *See supra* n.3.

that a waiver of basic filing requirements is not warranted, as the facts disclosed in the referenced applications are not sufficient to establish that Liberty Media intends to take actions, such as conversion of preferred to common stock and installation of a board majority, that would constitute exercise of *de facto* or *de jure* control.⁸ We therefore dismiss Liberty Media's applications.

Sincerely,

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⁸ Cases cited by Liberty Media do not involve, as here, unconverted rights with respect to voting for directors, and thus do not require a different result. *See, e.g.,* Liberty Media Opposition at 11-13, citing *General Motors Corp. and Hughes Electronics Corp., Transferors, and the News Corporation Limited, Transferee*, 19 FCC Rcd. 473 (2004) (100 percent change in voting shares; proposed *de facto* control by one of the new owners indicated by 34 percent common stock holding) and *News Corp. and The DIRECTV Group, Inc., Transferors, and Liberty Media Corp., Transferee, for Authority to Transfer Control*, 23 FCC Rcd 3265 (2008) (proposing transfer of 40.36 percent common stock).