

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Sirius Satellite Radio Inc.)	File Nos. SAT-T/C-20021122-00225;
)	SES-T/C-20021122-02047
Application for Transfer of Control of)	
Station Authorization)	
)	

ORDER

Adopted: January 14, 2003

Released: January 14, 2003

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant authority to Sirius Satellite Radio Inc. (“Sirius”) to transfer control of its Satellite Digital Radio Service (“SDARS”) space station license from the current stockholders of Sirius to Sirius’ creditors, none of which individually will have a controlling interest.¹ Grant of this authority will allow Sirius to access financial resources necessary to maintain and expand its service to the public.

II. BACKGROUND

2. On October 10, 1997, the Commission authorized Sirius to launch and operate a satellite system to provide SDARS in the 2320-2332.5 MHz frequency band.² Although originally licensed as a geostationary satellite system, Sirius subsequently modified its system to incorporate a non-geostationary satellite system of three satellites in highly-elliptical orbits.³ Sirius successfully launched its satellite system in 2000, and commenced commercial service to the public in February 2002.

3. On November 22, 2002, Sirius filed the instant Transfer Application seeking Commission approval to transfer control of its space and earth station authorizations.⁴ Sirius is a Delaware corporation that is publicly traded on the NASDAQ National Market (NASDAQ: SIRI). In its Transfer Application, Sirius’ states that its stock is widely-held and only two shareholders hold voting rights greater than ten percent each.⁵ The remainder of Sirius’ stock is held by widely diversified public stockholders

¹ See Application for Satellite Space and Earth Station Authorizations for Transfer of Control, Sirius Satellite Radio Inc., SAT-T/C-20021122-00225 and SES-T/C20021122-02047, filed November 11, 2002 (“Transfer Application”). We have separately authorized Sirius to transfer control of its related earth station authorization. See Public Notice, Satellite Communications Services Information Re: Actions Taken, Report No. SES-00461 (January 8, 2003).

² See Satellite CD Radio, Inc., *Order and Authorization*, DA 97-2191, 13 FCC Rcd 7971 (Int’l Bur. 1997). The Commission issued the license to Satellite CD Radio, Inc., which is presently a wholly-owned subsidiary of Sirius.

³ See Sirius Satellite Radio, Inc., *Order and Authorization*, DA 01-639, 16 FCC Rcd 5419 (Int’l Bur. 2001).

⁴ See *supra*, note 1.

⁵ See Transfer Application at Exhibit B, Attachment 1. According to the Transfer Application, funds affiliated with OppenheimerFunds Inc. have voting rights of 14.4%, and two affiliated private investment partnerships – Apollo Investment Fund IV, L.P. and Apollo Overseas Partners IV, L.P. – have aggregate voting rights of 10.2%. In addition, affiliates of The Blackstone Group L.P. have voting rights of 7.5%.

(approximately 66%) and by the officers and directors of Sirius (approximately 1.9%).⁶

4. Sirius files the present Transfer Application as part of a financial restructuring of its outstanding indebtedness and equity. Under the proposed restructuring, Sirius' current debt holders and preferred stockholders have agreed to convert approximately \$700 million of Sirius debt, and approximately \$525 million of Sirius preferred stock, into common stock.⁷ In addition, the Transfer Application states that Sirius will receive an additional \$200 million of capital from its existing debt holders and preferred stockholders in exchange for additional shares of common stock. As a result of this transaction, current debt holders will collectively hold approximately 62 percent of Sirius' outstanding common stock, and the voting rights of existing widely diversified common stockholders will be diluted to less than seven percent. No single entity, however, will own fifty percent or more of the outstanding stock post-restructuring, nor will any group of stockholders acting in concert hold combined interests of fifty percent or more. Sirius represents that it will continue to be controlled by its seven-member Board of Directors following the completion of the restructuring, and that no one stockholder or group of stockholders will have the ability to elect a majority of the Board. Sirius also states that the restructuring is not expected to result in the replacement of any existing company officers.⁸

5. Sirius' Transfer Application was placed on Public Notice on November 27, 2002, and the comment period closed on January 3, 2003.⁹ No comments were filed during the comment period.

III. DISCUSSION

6. In considering the Sirius Transfer Application, we must determine, pursuant to section 310(d) of the Act, whether the proposed transfer will serve the public interest.¹⁰ The legal standards that govern our public interest analysis for transfers of licenses and authorizations under section 310(d) require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.¹¹ Our analysis considers the likely competitive effects of the proposed transfer and whether such transfer raises significant anti-competitive issues.¹² In addition, we consider the efficiencies and

⁶ See *id.*

⁷ See Transfer Application, Exhibit B.

⁸ *Id.*

⁹ See Public Notice, Policy Branch Information: Satellite Space Applications Accepted for Filing, Report No. SAT-00129 (November 27, 2002); Public Notice, Satellite Communications Services: Satellite Radio Applications Accepted for Filing, Report No. SES-00448 (November 27, 2002).

¹⁰ 47 U.S.C. § 310(d).

¹¹ See, e.g., *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, FCC 01-142, 16 FCC Rcd 9779, 9789, para. 17 (2001) ("*VoiceStream/Deutsche Telekom Order*"). See also *AT&T Corp., British Telecommunications, plc, VLT Co. LLC, Violet License Co. LLC, and TNV (Bahamas) Limited, Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc*, Memorandum Opinion and Order, FCC 99-313, 14 FCC Rcd 19140, 19147, para. 15 (1999) ("*AT&T/BT Order*"); *Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee*, Order and Authorization, DA 01-2732, 16 FCC Rcd 20469, 20473, para. 11 (IB 2001) ("*Motient Services Order*").

¹² See, e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148, para. 15.

other public interest benefits that are likely to result from the proposed transaction.¹³

7. No party has identified any actual or potential public interest harms that would arise from the proposed restructuring. To the contrary, we find that the proposed restructuring will benefit the public interest. The Commission has previously found that the SDARS systems can benefit the public by providing high quality radio signals to listeners who currently receive few terrestrial radio signals, by promoting new and diverse niche audio programming, and by fostering new technology.¹⁴ The proposed restructuring will help ensure that Sirius, one of only two licensed SDARS providers, is financially robust and capable of continuing to provide service to new and existing customers. Without such restructuring, Sirius represents that it will not be able to fund its operations beyond the second quarter of 2003, and that service to existing Sirius customers could be adversely affected.¹⁵ Thus, given these public interest benefits and the corresponding lack of public interest harms, we find that it is in the public interest to grant Sirius' Transfer Application.¹⁶

8. Under Section 25.119(f) of the Commission's rules, transfers of control must be completed within 60 days from the date of authorization.¹⁷ We note that in its Transfer Application, Sirius states that the intended closing date for its restructuring is March 15, 2003, which falls slightly outside the 60 day period established by Section 25.119(f) for purposes of consummating the earth station license transfer.¹⁸ On our own motion, we will consolidate the authorization date of the transfer of control of Sirius' earth station licenses with the authorization date of the transfer of control of Sirius' space station license. Thus, for purposes of Section 25.119(f), Sirius will have 60 days from the release date of this Order to consummate the transfer of control for both the earth and space station authorizations.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 0.261 and Section 25.119 of the Commission's rules, 47 C.F.R. §§ 0.261 and 25.119, and Section 310(d) of the Communication Act of 1934, as amended, 47 U.S.C. § 310(d), that the transfer of control application of Sirius Satellite Radio Inc., File No. SAT-T/C-20021122-00225, IS GRANTED.

10. IT IS FURTHER ORDERED that the authorization dates of the transfer of control of Sirius' earth station and space station licenses, File Nos. SAT-T/C-20021122-00225 and SES-T/C-20021122-02047, ARE CONSOLIDATED to the release date of this Order.

11. IT IS FURTHER ORDERED that this grant IS CONDITIONED on our requirement pursuant to Section 25.119(f) of the Commissions Rules, 47 C.F.R. § 119(f), that Sirius shall consummate this transaction within 60 days from the date of this authorization, and within 30 days of consummation, notify the Commission by letter of the date of consummation.

12. This Order is issued pursuant to Sections 0.261 and 0.331 of the Commission's rules on delegated authority, 47 C.F.R. §§ 0.261, 0.331, and is effective upon release. Petitions for reconsideration

¹³ See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789, para. 17.

¹⁴ See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, *Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 95-91, 12 FCC Rcd 5754, 5759-5762 (1997).

¹⁵ See Transfer Application, Exhibit F.

¹⁶ This authorization specifically includes authority to transfer control of existing grants of, and requests for, special temporary authority to operate terrestrial repeaters. See Transfer Application, Exhibit C.

¹⁷ 47 C.F.R. § 25.119(f) (2001).

¹⁸ See *supra*, note 1.

under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. *See* 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
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