

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

In the Matter of)	File No.: EB-09-SE-221
)	
Sirius XM Radio Inc.)	Acct. No.: 201232100028
)	
)	FRN: 0006345730

ORDER

Adopted: July 3, 2012

Released: July 3, 2012

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Sirius XM Radio Inc. (Sirius XM). The Consent Decree resolves and terminates the Bureau's investigation into Sirius XM's compliance with the conditions imposed by the Commission in its approval of the merger application of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings, Inc.¹

2. The Bureau and Sirius XM have negotiated a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of new material evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Sirius XM possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,² and Sections 0.111 and 0.311 of the Commission's rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings, Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd 12348 (2008).

² 47 U.S.C. § 154(i).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to James S. Blitz, Vice President and Regulatory Counsel, Sirius XM Radio Inc., 1500 Eckington Place, N.E., Washington, D.C. 20002, and to Jennifer D. Hindin, counsel for Sirius XM Radio Inc., Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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Sirius XM Radio Inc.)	Acct. No.: 201232100028
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Sirius XM Radio Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into Sirius XM's compliance with the conditions imposed by the Commission in its approval of the merger application of Sirius Satellite Radio Inc. and XM Satellite Radio Holdings, Inc.⁴

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Sirius XM is subject by virtue of its business activities.
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - (g) "Investigation" means the investigation commenced by the Bureau's letter dated May 15, 2009⁵ concerning Sirius XM's compliance with the conditions contained in the *Merger Order*, including the company's voluntary commitments as set forth in Appendix B to the *Merger Order*.
 - (h) "Parties" means Sirius XM and the Bureau, each of which is a "Party."

⁴ Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings, Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348 (2008) (*Merger Order*). The *Merger Order* was effective upon adoption, on July 25, 2008.

⁵ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to James S. Blitz, Vice President and Regulatory Counsel, Sirius XM Radio Inc. (May 15, 2009).

- (i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (j) “Sirius XM” means Sirius XM Radio Inc., its predecessors-in-interest, and its successors-in-interest.

II. BACKGROUND

2. On July 25, 2008, the Commission approved the consolidated application of Sirius Satellite Radio Inc. (Sirius) and XM Satellite Radio Holdings Inc. (XM) for consent to the transfer of control of the licenses and authorizations held by Sirius and XM, and their subsidiaries, for the provision of satellite digital audio radio service in the United States. In doing so, the Commission conditioned its approval on Sirius XM’s compliance with the conditions contained in the *Merger Order*, including the company’s fulfillment of its voluntary commitments as set forth in Appendix B to the *Merger Order*.⁶

3. On May 15, 2009, the Bureau sent Sirius XM a letter seeking information about Sirius XM’s compliance with the *Merger Order*.⁷ The Bureau asked Sirius XM to provide a statement detailing the company’s efforts to comply with certain *Merger Order* conditions and voluntary commitments. In its June 15, 2009 response,⁸ Sirius XM described the steps the company was taking to comply with the other *Merger Order* conditions and voluntary commitments.⁹ The Bureau subsequently issued follow-up letters of inquiry to Sirius XM,¹⁰ to which the company responded.¹¹

4. On July 27, 2011, after soliciting public comment, the Commission released a *Memorandum Opinion and Order* determining that the record evidence did not support taking action to extend the three year pricing condition contained in the *Merger Order*.¹² The Commission noted,

⁶ *Merger Order* at 12428, para. 180.

⁷ See *supra* note 2.

⁸ Letter from James S. Blitz, Vice President and Regulatory Counsel, Sirius XM Radio Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, (June 15, 2009).

⁹ *Id.* at 4-6.

¹⁰ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to James S. Blitz, Vice President and Regulatory Counsel, Sirius XM Radio Inc. (Apr. 12, 2010); Letter from John D. Poutasse, Acting Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Richard E. Wiley, Wiley Rein LLP, Counsel for Sirius XM Radio Inc. (July 1, 2011).

¹¹ See Letter from James S. Blitz, Vice President and Regulatory Counsel, Sirius XM Radio Inc., to Jacqueline Ellington, Esq., Spectrum Enforcement Division, FCC Enforcement Bureau, (May 12, 2010); Letter from James S. Blitz, Vice President and Regulatory Counsel, Sirius XM Radio Inc., to Jacqueline Ellington, Esq., Spectrum Enforcement Division, FCC Enforcement Bureau, (Dec. 3, 2010); Letter from James S. Blitz, Vice President, Regulatory Counsel, Sirius XM Radio Inc., to Kevin M. Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau, (July 15, 2011); Letter from James S. Blitz, Vice President, Regulatory Counsel, Sirius XM Radio Inc., to Kevin M. Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau, (July 26, 2011); Letter from James S. Blitz, Vice President, Regulatory Counsel, Sirius XM Radio Inc., to Kevin M. Pittman, Spectrum Enforcement Division, FCC Enforcement Bureau, (Aug. 5, 2011). Separately, in response to a verbal request from Bureau staff, Sirius XM produced information regarding its previous document production in the class action litigation, *Carl Blessing et al. v. Sirius XM Radio Inc.*, formerly pending in the United States District Court for the Southern District of New York.

¹² *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order, 26 FCC Rcd 10539 (2011).

however, that its decision did not limit the Commission's ability to take enforcement action against Sirius XM for failure to comply with the *Merger Order* or any of Sirius XM's voluntary commitments.¹³

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order. Sirius XM's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order.

6. **Jurisdiction.** Sirius XM agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Sirius XM agrees to the terms and conditions contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Sirius XM concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Sirius XM with respect to Sirius XM's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

9. **Voluntary Contribution.** Recognizing that the Parties expended resources in connection with this investigation and to avoid further expenditure of resources, Sirius XM agrees that it will make a voluntary contribution to the United States Treasury in the amount of Two Hundred Forty Thousand Dollars (\$240,000). The payment must be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox # 979088 SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. Sirius XM must also send electronic notification to Kevin Pittman at Kevin.Pittman@fcc.gov, JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

¹³ *Id.* at 10543, para. 9.

10. **Waivers.** Sirius XM waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Sirius XM shall retain the right to challenge Commission interpretation of this Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Sirius XM nor the Commission shall contest the validity of this Consent Decree or the Adopting Order, and Sirius XM shall waive any statutory right to a trial *de novo*. Sirius XM hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters addressed in this Consent Decree.

11. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Sirius XM does not expressly consent) that provision will be superseded by such Rule or Commission order.

13. **Successors and Assigns.** Sirius XM agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Laws.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** The individual signing this Consent Decree on behalf of Sirius XM represents and warrants that he is authorized by Sirius XM to execute this Consent Decree and to bind Sirius XM to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Patrick L. Donnelly
Executive Vice President, General Counsel and Secretary
Sirius XM Radio Inc.

Date