

Before the
Federal Communications Commission
Washington, DC 20554

Application of)
Liberty Media Corporation)
For Consent to Transfer of *De Facto*)
Control of Sirius XM Radio Inc.)
)
) ULS File Nos. 0005137812 and
) 0005137854
)
) Experimental License File Nos. 0007-
) EX-TC-2012; 0008-EX-TC-2012; and
) 0009-EX-TC-2012
)

To: International Bureau
Office of Engineering and Technology
Wireless Telecommunications Bureau

**OPPOSITION OF SIRIUS XM RADIO INC.
TO LIBERTY MEDIA CORPORATION'S PETITION FOR RECONSIDERATION
OF DISMISSAL OF APPLICATIONS
FOR CONSENT TO TRANSFER OF *DE FACTO* CONTROL**

Richard E. Wiley
Jennifer D. Hindin
Joshua S. Turner
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
202.719.7000

Attorneys for Sirius XM Radio Inc.

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	2
II.	LIBERTY MEDIA PRESENTS NO NEW FACTS OR LEGAL ERROR TO SUPPORT RECONSIDERATION	3
A.	Liberty Media Identifies No Material Facts Of Which It Was Unaware When It Filed The Applications	3
B.	Liberty Media’s Claims Of Legal Error Are Nothing More Than Restatements Of Its Prior Arguments	6
III.	LIBERTY MEDIA STILL HAS NOT PRESENTED A CONCRETE PLAN TO ASSUME DE FACTO CONTROL OF SIRIUS XM	9
IV.	CONCLUSION	13

Before the
Federal Communications Commission
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Application of)	
)	IBFS File Nos. SES-STA-20120320-
)	00280, SES-STA-20120320-00281,
Liberty Media Corporation)	SES-STA-20120320-00282, SAT-STA-
)	20120320-00053, SAT-STA-20120320-
For Consent to Transfer of <i>De Facto</i>)	00054, SAT-STA-20120320-00055,
Control of Sirius XM Radio Inc.)	SAT-STA-20120320-00056
)	
)	ULS File Nos. 0005137812 and
)	0005137854
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Sirius XM Radio Inc. (“Sirius XM” or “the Company”) hereby submits its Opposition to the *Petition for Reconsideration* filed by Liberty Media Corporation (“Liberty Media”) on May 30, 2012 (“the *Petition*”). The *Petition* asks the International Bureau (“IB”), the Office of Engineering and Technology (“OET”), and the Wireless Telecommunications Bureau (“WTB”) (collectively the “Bureaus”) to reconsider the dismissal of Liberty Media’s above-captioned applications for consent to the transfer of *de facto* control of Sirius XM (the “*Applications*”).¹

¹ Application of Liberty Media Corporation for Consent to Transfer of *De Facto* Control of Sirius XM Radio Inc., IBFS File Nos. SES-STA-20120320-00280, SES-STA-20120320-00281, SES-STA-20120320-00282, SAT-STA-20120320-00053, SAT-STA-20120320-00054, SAT-STA-20120320-00055, SAT-STA-20120320-00056; ULS File Nos. 0005137812 and

The *Petition* is nothing more than a restatement of Liberty Media's intent to take actions at some unspecified point in the future that may result in a transfer of control of Sirius XM's FCC licenses. It fails to set forth any new facts or identify any legal errors that would justify reinstating the *Applications*. For the reasons stated herein, and those in Sirius XM's previously-filed *Petition to Dismiss or Deny*² and *Reply*,³ the Bureaus properly dismissed the *Applications* as unacceptable for filing and should deny the *Petition*.

I. INTRODUCTION AND SUMMARY.

Liberty Media asserts that it now has the "ability and intent" to exert *de facto* control over Sirius XM, but the *Petition* does not meet the legal standard for reconsideration of an action taken on delegated authority. It offers no new material facts or arguments. Liberty Media's filing simply recites the same facts and the same arguments that the Bureaus already have considered and rejected. As a result, reconsideration is not appropriate.

The *Petition* attempts to create the impression that Liberty Media has firmly committed itself to take control of Sirius XM. However, it provides no specific proposal on how or when Liberty Media intends to do so. The *Petition* offers nothing more than a refined menu of options for how Liberty Media *might* assume control of Sirius XM. Liberty Media still has not stated definitively that it will convert its shares of Sirius XM preferred stock, initiate a proxy contest, or conduct open market purchases. Nor has it provided a firm indication of when it might pursue any such actions. This is not surprising. As recently as two days after Liberty Media filed the

0005137854; Experimental License File Nos. 0007-EX-TC-2012, 0008-EX-TC-2012 and 0009-EX-TC-2012 (filed Mar. 20, 2012).

² Sirius XM, *Petition to Dismiss or Deny* (filed Mar. 30, 2012) (the "*Petition to Dismiss or Deny*").

³ Sirius XM, *Reply of Sirius XM Radio Inc.* (filed April 20, 2012) (the "*Reply*").

Petition, its Chief Executive Officer declared that he still did not know “which way we’re going to go.”⁴ While a petitioner and its Chief Executive Officer can deal in hypotheticals, the FCC cannot. Liberty Media’s failure to outline a specific transaction that it intends to pursue—and on which it seeks Commission approval—is as fatal to the *Petition* as it was to the *Applications*.

II. LIBERTY MEDIA PRESENTS NO NEW FACTS OR LEGAL ERROR TO SUPPORT RECONSIDERATION.

To justify reconsideration of a decision made on delegated authority, the petitioner must “show[] a material error or omission in the original order or raise[] additional facts not known or existing until after the petitioner’s last opportunity to present such matters.”⁵ The *Petition* does neither.

A. Liberty Media Identifies No Material Facts Of Which It Was Unaware When It Filed The *Applications*.

Liberty Media contends that reconsideration is appropriate because “[s]ince the issuance of the Bureau Decision” it “has significantly increased its ownership interest” in Sirius XM common stock and made more explicit its intent to take control of Sirius XM.⁶ But neither of these constitutes new material facts warranting reconsideration and reinstatement of the *Applications*.

⁴ Interview by David Faber of Gregory B. Maffei, CEO, Liberty Media, CNBC (June 1, 2012 10:40 a.m. ET), *available at* <http://www.cnbc.com/id/15840232?video=3000092669&play=1>.

⁵ *In re Forever of PA, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd. 16032, 16034 (EB 2011) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 CFR §1.106(c)).

⁶ *Petition* at 12-13.

First, Liberty Media's forward purchase contract, a contract that could give it an additional 4% equity interest in Sirius XM if physically settled,⁷ is not a fact that was "not known or existing until after the petitioner's last opportunity to present such matters." In an amendment to its Schedule 13D filing with the Securities and Exchange Commission and available to the public, Liberty Media disclosed that it entered into the forward purchase contract on December 30, 2011 – almost three months before Liberty Media filed the *Applications* and more than four months prior to "the issuance of the Bureau Decision."⁸ At the time of the *Applications*' filing, the forward purchase contract was well known to Liberty Media, even though it chose not to include this information in its filing. Incremental disclosure of facts wastes the resources of the Commission and cannot serve as a basis for reconsideration.⁹ A party may not "sit back and hope that a decision will be in its favor and then, when it isn't, to parry with an offer of more evidence."¹⁰

⁷ As noted in Amendment No. 1 to Liberty Media's Schedule 13D filed with the Securities and Exchange Commission on May 9, 2012 ("Schedule 13D, Amendment No.1"), Liberty Media has the "right to elect cash settlement instead" of purchasing the shares that are covered by the contract. If Liberty Media exercises its right to cash settle, no additional shares will be acquired pursuant to the forward purchase contract.

⁸ See Schedule 13D, Amendment No. 1 ("On December 30, 2011, the Reporting Person entered into a forward purchase contract . . . with an unaffiliated counterparty covering up to a maximum of 315,000,000 notional shares of the Issuer's Common Stock."). The *Petition* identifies the "settlement date" of the forward purchase contract as July 11, 2012, but omits any reference to the date Liberty Media entered into the contract. See *Petition* at 13; Declaration of Craig Troyer in Support of Petition for Reconsideration of Dismissal of Applications for Consent to Transfer of *De Facto* Control ¶ 4 (May 30, 2012).

⁹ See *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941) ("No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed."); see also *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, 26 FCC Rcd. 6520 ¶ 43 (2011) (holding that an applicant providing "piecemeal and selective" information "wasted precious Commission resources"). Liberty Media thus cannot show that consideration of these newly-disclosed facts would serve the public interest. *Petition* at 6.

¹⁰ *Colorado Radio Corp.*, 118 F.2d at 26; see also *Application of ITV, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 1908 ¶ 7 (WTB 2007) ("It is well established that parties are not entitled to hold facts in reserve to contest a possible unfavorable decision."); *Indiana &*

Second, Liberty Media’s recent open-market purchase of Sirius XM common shares may be new, but is not material. To warrant reconsideration, new evidence must “raise substantial or material questions of fact.”¹¹ Liberty Media’s acquisition of approximately 60 million shares of Sirius XM on May 8-9, 2012 constitutes only 1.6% of the current outstanding common stock.¹² A *de minimis* purchase of this kind, which is non-controlling, does not raise a substantial or material question of fact sufficient to require reconsideration of the Bureaus’ prior decision.

Finally, Liberty Media’s declaration that it intends “to assert control over” Sirius XM¹³ cannot justify reconsideration because it is not new. As Liberty Media concedes, it previously

Sprint Nextel Corp., Memorandum Opinion and Order on Reconsideration, 26 FCC Rcd. 5067 ¶ 9 (PSHSB 2011) (recognizing that the FCC is “foreclosed from considering” an “improper attempt to introduce new evidence” presented on reconsideration); *Coastal Broadcasting Partners*, Memorandum Opinion and Order, 7 FCC Rcd. 6594 ¶ 10 (1992) (“[P]etitioners make no effort to explain why they could not have raised these matters earlier, and therefore they are procedurally deficient under . . . the rules.”). It is unclear whether any additional facts remain undisclosed.

¹¹ See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Dennis J. Kelly, Esq., 26 FCC Rcd. 16155 (Nov. 29, 2011); *Matter of Mt. Wilson FM Broadcasters, Inc.*, Opinion, 26 FCC Rcd. 12762 (MB 2011); *Matter of Petition for Reconsideration of Dismissal of Application for Assignment of Licenses from United States Wireless Cable, Inc. to Rioplex Wireless Ltd.*, Memorandum Opinion and Order, 22 FCC Rcd. 22242, 22246 ¶ 12 (WTB 2007); *Implementation of Satellite Home Viewer Improvement Act of 1999*, Order on Reconsideration, 17 FCC Rcd. 27875, 27877 ¶ 3 (2002) (“Reconsideration of a Commission decision is warranted only if the petitioner cites a material error of fact or law, or presents additional facts and circumstances which raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action.”). The case cited by Liberty Media is consistent with this statement of law and distinguishable from the present circumstance. In *Qwest Communications Corp. v. Farmers and Merchants Mutual Telephone Co.*, Third Order on Reconsideration, 25 FCC Rcd. 3422 (2010), a party in a formal complaint proceeding withheld material information in discovery that influenced the outcome of the proceeding. Thus, the Commission determined that it was entitled to “change its ruling based on the new facts” that prejudiced the opposing party. *Id.* ¶ 12. Unlike in *Qwest*, here the party claiming the relevance of the withheld information is the very entity that failed to offer the information in the first instance. There is no precedent for granting reconsideration on these grounds.

¹² This is based upon 3,788,436,591 total outstanding shares of Sirius XM common stock. See Sirius XM, Proxy Statement (Schedule 14A) (Apr. 11, 2012). This percentage would be reduced to 0.95% if Liberty Media were to convert all of its Series B-1 Preferred Shares into Sirius XM common stock.

¹³ *Petition* at 5.

informed the Commission that it intended to assert *de facto* control of Sirius XM¹⁴ and, indeed, this was the impetus for filing the *Applications*. The Bureaus properly concluded that Liberty Media's expressed intent, standing alone, does not present a sufficient basis for the Commission to entertain the *Applications*.¹⁵ Liberty Media's restatement of that intent does nothing to undermine this conclusion.

B. Liberty Media's Claims Of Legal Error Are Nothing More Than Restatements Of Its Prior Arguments.

Liberty Media offers three purported errors in the Bureaus' dismissal letters as grounds for reconsideration, arguing that the Bureaus (1) improperly considered Sirius XM's *Petition to Dismiss or Deny*, (2) denied Liberty Media the opportunity to seek the required prior approval for a transfer of control, and (3) should have granted Liberty Media's waiver request based on its expressed intent to seek control of Sirius XM. As shown below, these allegations "simply reiterate[] arguments previously considered and rejected."¹⁶ Accordingly, Liberty Media's *Petition* must "be denied."¹⁷

Liberty Media again faults Sirius XM for filing its *Petition to Dismiss or Deny*

¹⁴ *Petition* at 5 (stating that "the applications as filed sufficiently demonstrate that Liberty Media intends to assert *de facto* control over Sirius").

¹⁵ See Letter from Roderick Porter, Deputy Chief, International Bureau and Julius Knapp, Chief Engineer, Office of Engineering and Technology to Robert L. Hoegle, DA 12-717 (May 4, 2012) ("*IB/OET Letter*") (concluding that "the *facts* disclosed in the referenced applications are not sufficient to establish that Liberty Media intends to take actions . . . that would constitute exercise of *de facto* or *de jure* control") (emphasis added); Notice of Dismissal, Ref. No. 5370149 (WTB May 10, 2012) ("*WTB Letter*") (noting that Liberty Media "does not sufficiently describe how and when the proposed transaction is expected to occur").

¹⁶ See *Bennett Gilbert Gaines*, Memorandum Opinion and Order, 8 FCC Rcd. 3986, 3986 (1993) (citations omitted); see also *Application of Ponce Television Corp. (WLUZ-TV) Ponce, Puerto Rico*, Memorandum Opinion and Order, 2 FCC Rcd. 5878 ¶ 10 (1987) ("It is well established that reconsideration is not granted merely for the purpose of debating matters again.").

¹⁷ See *Bennett Gilbert Gaines*, 8 FCC Rcd. at 3986.

prematurely and without a supporting affidavit. The *Petition* merely repeats points that Liberty Media already raised in its *Opposition*.¹⁸ In its *Reply*, Sirius XM cited Section 25.154 of the Commission's rules, authorizing "consideration of a pleading filed prior to a Public Notice as an informal objection."¹⁹ Sirius XM also explained that no affidavit was necessary because "the facts required for the Commission to dismiss Liberty Media's *Application* are not in dispute."²⁰ The Bureaus considered these positions and agreed with Sirius XM,²¹ and the *Petition* provides no additional argument as to why this amply-supported decision was improper.

Liberty Media next contends that dismissal of the *Applications* constitutes an effective delegation of authority to Sirius XM and "a denial of administrative due process to Liberty Media."²² This argument also restates a contention raised in the *Opposition*²³ and refuted in Sirius XM's *Reply*.²⁴ Specifically, Sirius XM noted that Section 310(d) is inapplicable where, as here, the applicant asks "the agency to bless some unspecified action that an applicant may

¹⁸ See *Opposition* at 26 (arguing that Sirius XM's "filing of its Petition prior to release of a public notice listing Liberty Media's transfer applications violated the statutory and regulatory requirements for petitions to deny" and that "Sirius submitted no affidavit based upon personal knowledge to support any of the factual statements contained in its Petition").

¹⁹ *Reply* at 16.

²⁰ *Id.*

²¹ In fact, contrary to Liberty Media's assertion, see *Petition* at 12, the Bureaus did not grant Sirius XM's *Petition to Dismiss to Deny*; instead, the Bureaus considered the arguments raised therein, as is appropriate for an informal objection, and proceeded to dismiss the *Applications*.

²² *Petition* at 7-9.

²³ See *Opposition* at 9-10 ("Sirius cannot prevent Commission review of applications required by Section 301(d) of the Communications Act, nor may it use the Commission's administrative application filing procedures to promote the interests of incumbent management, simply by refusing to provide passwords, thereby precluding the filing of standard form electronic transfer applications at the Commission.").

²⁴ See *Reply* at 6-8.

choose to pursue.”²⁵ Moreover, Sirius XM observed that if Liberty Media’s unstated plan to transfer control involved a hostile takeover, Liberty Media did not follow the application procedures outlined by the Commission in its Policy Statement on Tender Offers and Proxy Contests.²⁶ Liberty Media’s decision to depart from established precedent and failure fully to disclose its plans—not any obstruction by Sirius XM—precludes the Commission from considering the *Applications* and any proposed transaction that Liberty Media may be contemplating.²⁷

Finally, Liberty Media finds fault with the Bureaus’ decision not to waive the Commission’s filing requirements so that it could submit the *Applications* without access to Sirius XM’s electronic accounts.²⁸ The FCC may waive the procedural requirements established in its rules only “if good cause therefor is shown.”²⁹ In denying Liberty Media’s waiver request, the Bureaus followed the Commission’s well-established precedent that it will not consider hypothetical applications and that “a showing of de facto control must rely on facts and events that have occurred and not speculation as to what might occur in the future.”³⁰ Specifically, the

²⁵ *Reply* at 6.

²⁶ *Reply* at 7-8 (citing *Tender Offers and Proxy Contests*, Policy Statement, 59 Rad. Reg. 2d 1536 (1986), *appeal dismissed sub nom. Office of Commc’n of the United Church of Christ v. FCC*, 826 F.2d 101 (D.C. Cir. 1987) (“*Tender Offers Policy Statement*”).

²⁷ Liberty Media’s continued reliance on the *News Corp.* and *Liberty Media-DirectTV Orders* remains misplaced. As Sirius XM demonstrated in its *Petition to Dismiss and Deny* and in its *Reply*, those cases did not involve an independent analysis of *de facto* control and are distinguishable from the present circumstances. *See Petition to Dismiss or Deny* at 16-17; *Reply* at 13-14. The Bureaus considered these arguments and properly concluded that, where Liberty Media does not control Sirius XM’s Board of Directors and has only unconverted rights to vote for those directors, it is not in a position to assert *de facto* control. *See IB/OET Letter* at 3 n.8.

²⁸ *See Petition* at 9-12.

²⁹ 47 C.F.R. § 1.3.

³⁰ *See Reply* at 3.

IB and OET determined that “the facts disclosed in the [*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 an exercise of *de facto* control.”³¹ Similarly, the WTB concluded that “the exhibit to the application does not sufficiently describe how and when the proposed transaction is expected to occur.”³² Liberty Media offers no new arguments and cites no new authority that would support revisiting these decisions. Accordingly, there again is no basis for reconsideration.³³

III. LIBERTY MEDIA STILL HAS NOT PRESENTED A CONCRETE PLAN TO ASSUME *DE FACTO* CONTROL OF SIRIUS XM.

Even if new facts existed that might justify consideration of a petition for reconsideration, the *Petition* nevertheless should be denied. Liberty Media has not proposed a specific transaction or transactions that would permit the Commission to consider the *Applications*.

The *Petition* does present one new detail—that Liberty Media intends to convert half of its preferred stock to common stock and “to take action as soon as practicable to cause the nomination and election of persons to Sirius’ Board of Directors such that a majority of the persons serving on the [Board] will be persons nominated by Liberty Media.”³⁴ However, this attempt to convey the impression of commitment is illusory. The *Petition* does not reveal when Liberty Media intends to make such a conversion, how it would secure a majority of the Board

³¹ *IB/OET Letter* at 3.

³² *WTB Letter* at 1.

³³ *See, e.g., One Mart Corp.*, Memorandum Opinion and Order, 23 FCC Rcd. 9910 ¶ 5 (2008) (holding that “[a] petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied”); *General Motors Corp. and Hughes Electronics Corp.*, Order on Reconsideration, 23 FCC Rcd. 3131 ¶ 20 (2008) (rejecting a petition that “largely re-argue[d] the issues that it raised in its [initial filing] . . . that [the Commission] addressed and rejected”).

³⁴ *See Petition* at 14.

(i.e., through replacement or enlargement), what “as soon as practicable” might mean in this context, who the Board members may be, or even if those Board members would be affiliated with Liberty Media.

Liberty Media’s inaction speaks louder than its words. Although its preferred shares are “convertible at Liberty Media’s option at any time,”³⁵ they have not been converted. And even if they were, it would do nothing to alter the analysis. The *Applications* relied on the fact that Liberty Media’s preferred stock, once converted, would constitute a 40 percent share of Sirius XM’s common stock and, thus, would give it effective control. The Bureaus correctly rejected this “40 is the new 50” argument. Now, the *Petition* seems to contend that “32 is the new 50” – that is, by converting half of its preferred shares and closing on its forward purchase contract, Liberty Media will have a 32% unrestricted stake and *this* should be enough to give it control. However, Liberty Media’s reliance on future options to establish its ownership percentage remains inconsistent with longstanding FCC precedent.³⁶ And, if owning shares convertible to 40 percent of equity is insufficient to transfer control, an ill-defined promise to eventually own 32 percent of common stock certainly is insufficient to transfer control.

Liberty Media’s projections based on general stockholder voting statistics also are fundamentally flawed. As the Commission has declared, “conjecture about the outcome of possible proxy battles is not a basis for determining control.”³⁷

Liberty Media cannot claim that its “intent” to conduct an unspecified proxy contest at some future time is enough to warrant FCC review. The Commission previously has held that a

³⁵ *Petition* at 11-12.

³⁶ *See, e.g., Petition of Turner Broadcasting System Inc.*, 101 FCC 2d 843, 849 (1985) (“an option . . . does not enter into transfer-of-control determinations until the option is exercised.”).

³⁷ *Reply* at 10 (quoting *By Direction Letter Regarding Control of CBS Inc.*, Memorandum Opinion and Order, 2 FCC Rcd. 2274 ¶ 4 (1987)).

party initiating a proxy contest must provide, at a minimum, “information on citizenship, other attributable media interests and adverse findings regarding law violations” of its nominees so the agency can review their qualifications.³⁸ In prior cases where the agency has considered whether to approve a proxy contest, the applicant already had delivered to the target corporation “a written notice of intention to nominate their candidates for election to the . . . board of directors” and proposed specific nominees in its application.³⁹ Liberty Media still has not taken any of these steps.

Without a concrete plan before it, the FCC cannot properly evaluate the *Applications*.⁴⁰ It is incumbent upon Liberty Media, as the applicant, to disclose to the Commission all of the facts necessary for it to determine whether there will be a *de facto* transfer of control and, if so, how that transfer will be effectuated.⁴¹ The disclosure of such facts is essential for the agency to discharge its statutory mandate to consider the qualifications of the proposed licensee and

³⁸ *Tender Offers Policy Statement* at ¶ 18; see also *In re Application of HLT Corp. and Hilton Hotels Corp.*, Memorandum Opinion and Order, 13 FCC Rcd. 9667 ¶ 8 (1997) (recognizing that the application included “as required by the *Tender Offers* policy statement, information concerning the citizenship, attributable media interests and adverse legal findings on the part of its proposed nominees”); *Committee for Full Value of Storer Communications, Inc.*, 101 FCC 2d 434 ¶ 26 (1985), *aff’d sub nom. Storer Communications, Inc. v. FCC*, 763 F.2d 436 (D.C. Cir. 1985) (requiring that an applicant proposing a proxy contest provide “information as to citizenship, other media interests and any adverse findings as to the law”).

³⁹ See *Application of HLT Corp. and Hilton Hotels Corp.*, Memorandum Opinion and Order, 12 FCC Rcd. 18144 ¶ 3 n.2 (1997) (“*HLT/ITT II*”).

⁴⁰ See *Lorain Journal Co. v. FCC*, 351 F.2d 824, 830 (D.C. Cir. 1965) (“[W]hether a proposed transaction would result in a transfer of control . . . should be resolved by bringing the complete facts of the proposed transaction to the Commission’s attention for a ruling in advance of any consummation of the transaction.”) (emphasis added).

⁴¹ See *Reply* at 4 (citing *Applications Filed for the Transfer of Control of Insight Communications Company, Inc. to Time Warner Cable Inc.*, Memorandum Opinion and Order, 27 FCC Rcd. 497, 500 (2012) (“Applicants bear the burden of pro[of]” in a license transfer application); *Applications of CNCA Acquisition Corp.; For Commission Consent to a Transfer of Control of American Cellular Network Corp.*, Memorandum Opinion and Order, 3 FCC Rcd. 6088 ¶ 24 (1988) (stating that “the primary interest in the prosecution of these applications lies with [the applicant]”).

whether the form of control and the nature of the transaction will serve the public interest, convenience, and necessity.⁴²

In this case, Liberty Media appears to have told the press more about its plans than the Commission. Two days after filing its *Petition*, Liberty Media's Chief Executive Officer told CNBC:

I'm not sure where we're going with the investment. We've said there are two logical paths for us: one is to go into hard control—go to 51%—the other as you noted is to pursue a Reverse Morris Trust . . . where the shares would ultimately be put in our shareholders' hands . . . I can't tell you which way we're going to go.⁴³

Those two paths—neither of which were presented for approval in the *Applications* or the *Petition*—would entail differing benefits and harms to the public interest.

Liberty Media's claims that it could “purchase sufficient additional common shares of [Sirius XM] to enable it to assert *de jure* control” is asserted almost as an afterthought.⁴⁴ But, this is entirely irrelevant to the *Petition* which seeks reconsideration of the Bureaus' dismissal of a set of *Applications* seeking *de facto* control. If Liberty Media really is committed to taking *de jure* control of Sirius XM, it should present the FCC with an application seeking approval of such a transfer that follows the “established Commission procedures for hostile corporate

⁴² See 47 U.S.C. § 310(d) (providing that no license “shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly . . . except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby”); see generally *WHW Enters., Inc. v. FCC*, 753 F.2d 1132, 1139 (D.C. Cir. 1985) (“The Commission . . . relies heavily on the completeness and accuracy of the submissions made to it. Thus, applicants have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate.”) (internal citations and punctuation omitted).

⁴³ *Supra* note 4.

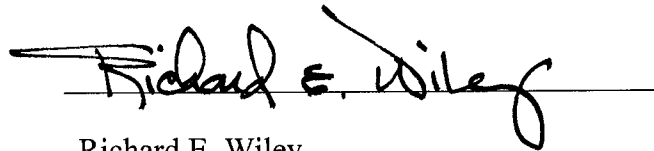
⁴⁴ *Petition* at 16.

takeovers,” as detailed in the *Tender Offer Policy Statement*.⁴⁵

IV. CONCLUSION.

Liberty Media has offered no new material facts and has identified no legal errors that justify reconsideration. Liberty Media is not currently in control of Sirius XM and has offered no specific proposal to assume control. As the Bureaus properly concluded in their dismissal letters, consideration of the *Applications* remains premature and inappropriate.

Respectfully Submitted,

A handwritten signature in black ink that reads "Richard E. Wiley". The signature is written over a horizontal line.

Richard E. Wiley
Jennifer D. Hindin
Joshua S. Turner
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
202.719.7000

Attorneys for Sirius XM Radio Inc.

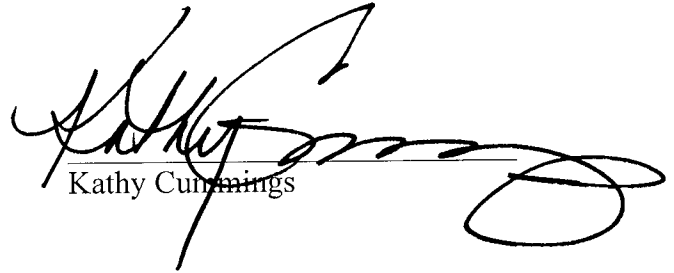
June 11, 2012

⁴⁵ *HLT/ITT II* at ¶ 3.

CERTIFICATE OF SERVICE

I, Kathy Cummings, do hereby certify that on this 11th day of June 2012, I caused copies of the foregoing "Opposition of Sirius XM Radio Inc. to Liberty Media Corporation's Petition for Reconsideration of Dismissal of Applications for Consent to Transfer of *De Facto* Control" to be delivered to the following via First Class U.S. mail:

Robert L. Hoegle
Nelson Mullins Riley & Scarborough LLP
101 Constitution Avenue, N.W., Suite 900
Washington, D.C. 20001
Counsel for Liberty Media Corporation


Kathy Cummings