Before the
COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services	)	Docket No. 2006-1 CRB DSTRA

WRITTEN DIRECT TESTIMONY FOR

Mel Karmazin

Chief Executive Officer
SIRIUS SATELLITE RADIO INC.

Witness for Sirius Satellite Radio Inc.

FINAL

SIR Ex. 1.1

Before the
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	)	
Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services	)	**Docket No. 2006-1 CRB DSTRA**
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WRITTEN DIRECT TESTIMONY OF MEL KARMAZIN

Introduction and Witness Background

1. I am the Chief Executive Officer of Sirius Satellite Radio Inc. ("Sirius"). I submit this statement in support of Sirius' direct case. As I describe below, Sirius is a provider of a satellite digital audio radio service ("SDARS"). The Sirius SDARS offers a wide variety of digital radio programming. The Sirius service is available to subscribers in their vehicles, homes, offices and via portable devices.

2. I joined Sirius in November 2004 as Chief Executive Officer. I am responsible for all aspects of Sirius' business, including its operations and strategic planning.

3. I offer this testimony to provide an overview of Sirius and its business and to discuss, qualitatively, the extraordinary investment, costs and risks that Sirius has incurred over an extended period of time in order to create from scratch and offer to the public a new audio entertainment service. I will also discuss the competition we face, as well as the critical importance to our success of providing compelling audio content that

includes sports and entertainment radio programming, and high quality original programming not found elsewhere. Specifically:

- Sirius was required to create an entirely new means of providing audio programming. The company first had to convince the FCC to authorize a satellite radio service. The company then had to win an auction for its license and pay more than $83 million to the government for that license, design, build and launch dedicated satellites, build an extensive system of terrestrial repeaters to enhance reception in cities and other areas where our satellite transmissions would be blocked, obtain FCC approval for the terrestrial repeaters, invent the world's smallest satellite antenna, develop an entirely new line of radios capable of receiving our transmissions and the integrated circuits to be used in those radios, convince automakers to include Sirius radios in their vehicles, and convince retailers to sell new radios for use in existing cars that did not have factory installed Sirius radios;
- Sirius is, in effect, many businesses in one, each of which faces fierce competition, strong opposition or huge challenges, in one or more forms. Sirius is:
    - a provider of compelling audio content, including both non-music content and music content, to which we add significant value. In this role, Sirius must compete with terrestrial radio and with emerging media for programming talent and for the ear of the listener. Sirius also faces ongoing efforts by the recording and broadcasting industries to create barriers to our success through changes to applicable laws and regulations;
    - a satellite and terrestrial transmission business, which has faced regulatory opposition from the terrestrial radio industry;
    - a consumer electronics business and an automotive electronics business, which has had to compete for the talent and attention of commercial sources for our radios and chip sets (such as Lucent, Agere), that had no experience in designing satellite radios; to overcome the automakers' reluctance to include Sirius radios in their cars and to sell Sirius to their customers; and to compete for shelf space and sales efforts at major retailers;
    - a consumer brand, which has had to start as an unknown company offering an unheard of service to compete for the consumer's attention against far better established names; and
    - a sales, marketing and customer service company, which has had to build an infrastructure capable of handling millions of accounts;
- Sirius had to assume extraordinary risk in all facets of its business, including risks inherent in the development of a new technology; risks

inherent in the launch and deployment of satellites; regulatory risks related to obtaining U.S. and international approvals in the face of staunch opposition from competitors, including the terrestrial radio industry; investment risk that we could not finance the many years between the inception and profitability (16½ years and counting), including the long delay inherent in developing our technologies, building our infrastructure, and securing the necessary approvals; and market risks that our service might not be acceptable to consumers at a price that would support the costs and provide a reasonable return on investment;

- As we tried to market our service, Sirius discovered that music programming would not drive a sufficient number of people to pay the subscription fees to keep our service alive and to provide a return on our investment. Music, and the right to play music, is ubiquitous, and we discovered that the public generally is not willing to pay substantial subscription fees for programming it can obtain for free. Rather, we have had to invest large sums in compelling content, particularly talk, entertainment and sports, and on radio personalities. Even when we program music, we incur substantial costs to add significant value to that music.
- In the sixteen years since the formation of Sirius, we have not yet made a profit. In fact, we have accumulated losses of $3.4 billion through June 30, 2006. Nevertheless, by the end of 2006, we will have paid the recording industry and its artists statutory performance royalties of millions of dollars. In other words, we have borne all of the risk; the recording industry and its artists have received, and will continue to receive, the return.

4. Prior to joining Sirius, I was the President and Chief Operating Officer of Viacom Inc., one of the world's largest entertainment and media companies, from May 2000 until June 2004. Viacom's business units included the Infinity group of radio stations; the CBS-owned television stations; the CBS and Paramount television networks; cable television networks, including MTV, BET, and Showtime; Paramount Pictures; Paramount Theme Parks; Simon & Schuster publishing; and theatrical exhibition operations. Before that, I served as President and CEO of CBS Corporation from January 1999 to May 2000, and President and COO of CBS Corporation from April 1998 to January 1999.

5. I have a long history in the radio industry. I was President and CEO of Infinity Broadcasting, a major radio group, from 1981 until it became a wholly owned subsidiary of Viacom in February 2001. Following the 1997 merger of Infinity and CBS Corporation, I also served as Chairman and CEO of CBS Radio. I was named Chairman and CEO of the CBS Station Group (radio and television) in May 1997. Prior to Infinity, I spent 10 years with Metromedia Corporation, another major radio group.

6. I have served on the Board of Directors of the Westwood One Radio Network, Blockbuster, Inc., and the New York Stock Exchange. I am Vice Chairman of the Board of Trustees of the Museum of Television & Radio. I have been inducted into the Broadcasting Hall of Fame, and I have received the National Radio Award from the National Association of Broadcasters.

Overview of Sirius' Business

7. In order to create an entirely new platform for the creation and transmission of audio programming, Sirius has been required to operate as many businesses in one. Each of these businesses requires highly specific skills, and places its own call on Sirius' financial and human resources and revenues. I can think of no other audio programming service that has had to invest the kinds of resources we have been required to invest, or that operates in as many different spheres as we do. No other service, perhaps since terrestrial radio many years ago, has had to invent and build its entire distribution platform, and not even terrestrial radio was required to pay the Federal government tens of millions of dollars for the right to broadcast. Internet radio certainly did not invent the Internet, did not need to create and build it, did not need to build receivers, and did not need to subsidize the inclusion of audio circuitry in personal

computers or convince consumers to put home computers in their homes. Digital cable radio services did not invent and build the cable and satellite television distribution systems to whom they sell their services, and certainly did not need to convince consumers to put television sets in their homes.

8. Sirius began as a technology company. Technology, and the development of technology, has remained an important part of Sirius. Sirius went to the FCC and convinced it to create a satellite radio service. That was 16 years ago, and Sirius has yet to turn a profit or achieve positive cash flow. Our multi-billion dollar investment has far outstripped our revenues to date.

9. "Satellite" is part of our name, and Sirius very much operates a satellite business. We have had to (i) design, (ii) contract for the building of, (iii) launch, (iv) maintain, and (v) track and control three orbiting satellites in a unique elliptical orbit that maximizes their angle over the United States. We purchased a fourth ground spare, and have recently entered into a contract for a new-generation satellite.

10. Sirius also operates a radio technology business and two distinct consumer electronics businesses. We have had to finance and supervise the development of more than three generations of application-specific integrated circuits, or chip sets, for use in a new type of radio that had never existed—an S-band satellite radio. To accomplish this we had to convince others to take on the task of working in this new field to address issues they had never encountered. We also developed the world's smallest non-directional satellite antenna, to make sure our service could be received in vehicles, without requiring a large dish on top. Imagine the consumer acceptance of a service that required even the "pizza" size dishes used by satellite television companies. These chip

sets and antennas are used in conjunction with radios engineered in two decidedly different electronics market—the retail consumer electronics market and the automotive market. The testimony of John Douglas Wilsterman and Robert Law describes the important and unique characteristics of each of these businesses, the extent of investment in each that Sirius has been required to make, the difficulties of convincing automakers to include a new radio at added cost in their cars, the difficulties of convincing retailers to carry and sell Sirius radios and the Sirius service, and the costly incentives that Sirius has been required to provide to ensure that its radios will be available to potential subscribers.

11. Sirius is, of course, also a radio programming business. We have the unique challenge of convincing consumers not only to buy a radio, but also to convince them to pay for our service. As I discuss more fully below, to accomplish this, we must do far more than provide programmed music. We must provide exclusive, compelling content for which a subscriber is willing to shell out hard earned cash each month.

12. Finally, we must market to potential subscribers, and bill and collect from our subscribers and keep them satisfied. Sirius has developed an extensive customer care business, with billing and collection functions, service activation, hardware servicing, all capable of servicing millions of subscribers. Among our most significant costs are those incurred in acquiring subscribers, which includes the subsidies we must pay to automakers and retailers, among other costs. Those are described more fully in the testimony of John Douglas Wilsterman, Robert Law and David Frear.

Sirius' History

13. It has taken more than sixteen years for Sirius to reach where it is today, and we still have not earned a single dollar in profit.

14. Sirius began life on May 17, 1990, as Satellite CD Radio, Inc.

15. In 1990, the company proposed that the FCC establish a satellite radio service in the S-band, and applied for a license. The application was opposed by the National Association of Broadcasters, the trade association representing the terrestrial radio industry. In the fall of 1992, the FCC called for license applications from others interested in establishing a satellite radio service. The FCC required applications to be filed by December 1992. Five applications were filed, two of which were subsequently withdrawn.

16. The company changed its name to CD Radio Inc. in 1992. The time between 1992 and 1996 were spent in technology development, demonstrating and testing the transmission of S-band signals to prototype radios, extensive regulatory activity involved in the creation of the rules governing the new service, strategic planning, research into the radio broadcasting consumer market, the consumer electronics market, and the automobile market, discussions with consumer electronics manufacturers, negotiating satellite and launch contracts, and developing programming plans.

17. Sirius originally intended to deliver 50 channels of digital audio programming, 30 channels of commercial-free music and 20 talk channels, using its satellites and satellite radio technology. The central concept was to provide nationwide programming to motorists and truckers in their vehicles.

18. By 1996, the company was one of the remaining applicants for a satellite radio license. The FCC adopted satellite radio licensing rules in March 1997 to allow two national licenses, and scheduled an auction for April 1 of that year. The auction occurred on April 1 and 2, 1997. The winning bidders were American Mobile Radio

Corporation (the predecessor to XM Satellite Radio, Inc.), which bid approximately $89 million, and Sirius, which bid $83.3 million. Full payments for the spectrum was made on October 10, 1997.

19. In 1997 and 1998, the company recruited personnel, started work on its terrestrial repeater network, entered into contracts for the design, development and manufacture of its chip sets, an essential element of all Sirius radios, began construction of its national broadcast studio, and obtained additional financing for its activities. We also sought FCC approval for our terrestrial repeater network under a rulemaking commenced by the FCC in March 1997. As with virtually all of our efforts to obtain regulatory approval for the many parts of our service, we faced opposition and attempts to limit our activities. On the programming side, Sirius expanded its planned offering to 100 channels (50 music, 50 talk) and entered into agreements with news, talk and special-interest program providers, including Bloomberg News Radio and C-SPAN.

20. On November 18, 1999, the company changed its name to Sirius Satellite Radio Inc. The years 1999 and 2000 saw the launch of its three satellites (in July, September and December, 2000), entry into critical exclusive alliances with Ford, DaimlerChrysler and BMW to install Sirius radios in their vehicles, and with consumer electronics retailers to sell Sirius radios for existing cars. Work continued on Sirius' terrestrial repeater network and Sirius completed construction of its national broadcasting studio. Sirius entered into agreements for several news, talk, sports and entertainment brands, including CNBC, NPR and Discovery. In addition, Sirius entered into an agreement for operation of its customer care call center, and deployed a subscriber

management system. Unfortunately, challenges in the development of chip sets delayed the commencement of service.

21. In 2001 and 2002, Sirius continued to develop its radios, deploy terrestrial repeaters, expanded its alliances with automakers, including Nissan and Volkswagen, entered into programming agreements with news and talk brands, including Fox News, CNN Headline News, ABC, The Weather Channel, and Court TV, and entered into an agreement with Hertz for inclusion of Sirius radios in select Hertz cars.

22. Sirius finally launched its service in select markets on February 14, 2002. Nationwide launch occurred on July 1, 2002, more than 12 years after the founding of Sirius and more than 5 years after Sirius won its FCC license.

23. In the sixteen years that the Company has existed we have accumulated net losses of $3.4 billion through June 30, 2006. Nevertheless, by the end of 2006, we will have paid the recording industry and its artists statutory performance royalties of millions of dollars. In other words, we have borne all of the risk; the recording industry and its artists have received the return.

24. Between capital investment, and net losses (after adjustment for interest, depreciation and amortization), Sirius has more than $4 billion invested in its enterprise. Of course, this investment is not finished. We expect to invest more than $1 billion in coming years to replace our satellites and build additional terrestrial repeaters. In addition, we are still accumulating losses.

The Risks Sirius Has Faced and Still Faces

25. Sirius has faced extraordinary risks in bringing its business to the public. These risks include new technology risks, satellite risks, regulatory risks, financial risk, the market risk related to consumer acceptance of a new, untested service, and competitive risks. It is important to take these risks (and the return necessary to generate investment in the face of these risks) into account in determining how to set an appropriate royalty rate for sound recording performances.

26. Sirius remains a risky venture. The material risks to Sirius are described in the "Risk Factors" section of our Annual Report on Form 10-K for the year ended December 31, 2005, a copy of which is attached as SIR Ex. 1.

27. Sirius based its business plan upon a new, untested technology that required the development of a means of transmitting and receiving with reliability relatively low power satellite transmissions in vehicles, with an antenna small enough to be acceptable to consumers. Moreover, Sirius had to rely on third parties that had never dealt with this technology to develop the radios and chip sets to accomplish this task. This led to delays in the introduction of Sirius' radios.

28. As Roger Rusch testifies, satellite ventures are inherently risky. Launch vehicles fail. Launches impose enormous stresses upon precise electronics. Any mistake in trajectory can render a satellite worthless. Space is a unique and unforgiving environment. Satellites cannot be economically repaired once they are launched.

29. Before we could get off the ground, Sirius needed to convince the FCC to create an entirely new radio service that never before existed. Sirius filed a detailed application with the FCC. The application was followed, five years later, by an auction

among bidders for two satellite radio licenses. Sirius was also required to obtain U.S. regulatory approval for terrestrial repeaters and uplink facilities, and international coordination for its satellites and possible interference from our transmissions. In virtually every case, our regulatory efforts were opposed by the terrestrial broadcasting industry, which long ago perceived satellite radio as a threat and now views satellite radio as a major competitor. Failure to obtain the necessary regulatory approvals would have prevented us from commencing or operating our business.

30. Sirius has faced significant financial risks as well. Obtaining capital in the face of the risks we face has been expensive and requires the prospect of huge returns. If investors at any time had decided that Sirius would not provide those returns, there would be no Sirius.

31. Sirius has faced and continues to face enormous market risks. When the Company began, it made an enormous gamble that consumers would be willing to spend between $10 and $13 dollars a month to replace a service that they could receive for free. As described in the Company's 2000 Annual Report on Form 10-K (at 14-15),

> Currently no one offers a commercial satellite radio service such as Sirius in the United States. As a result, our proposed market is new and untested, and we cannot reliably estimate the potential demand for this service or the degree to which our service will meet that demand. We cannot assure you that there will be a sufficient demand for Sirius to enable us to achieve significant revenues or cash flow or profitable operations. Sirius will achieve or fail to gain market acceptance depending upon many factors beyond our control, including: the willingness of consumers to pay subscription fees to obtain satellite radio broadcasts; the cost, availability and consumer acceptance of radios capable of receiving our broadcasts; our marketing and pricing strategies and those of XM, our direct competitor; the development of alternative technologies or services; and general economic conditions.

The market risks were magnified by the fact that the relevant market conditions were not those that existed when enormous investments were made, or even when those words

were written, but the conditions that would exist years in the future. As I discuss below, Sirius soon discovered that programmed music could not sustain the business. Thus, we were required to invest heavily in exclusive non-music content.

32. Sirius has faced and continues to face significant competitive risks. We have been required to build our business against fierce competition. As I discuss in the next section, we compete at every turn. We continue to face intense competition from one of the largest and most powerful industries in the country, terrestrial radio. New competition is being developed as we speak, in the form of services such as such as mobile Internet through technologies such as Wi-Max. Moreover, we cannot know what new technologies and services may emerge as competitors in the near term. As our 2005 10-K states (at 21):

> The satellite industry and the audio entertainment industry are both characterized by rapid technological change, frequent new product innovations, changes in customer requirements and expectations, and evolving industry standards. . . . Products using new technologies, or emerging industry standards, could make our technologies obsolete or less competitive in the marketplace.

Our Primary Competition Is Terrestrial and Satellite Radio

33. From the beginning, Sirius has understood that it would face intense competition from terrestrial radio and from other services authorized by the FCC. That understanding has proven to be correct.

34. As Sirius disclosed in 1996, and as I know from experience,

> The AM/FM radio broadcasting industry is very competitive, and certain of the Company's competitors in this industry have substantially greater financial, management and technical resources than the Company. Unlike the Company, the radio industry has a well established market for its services and generally offers "free" reception paid for by commercial advertising rather than a subscription fee. In addition, certain AM and FM stations, such as National Public Radio, offer programming without commercial interruption.

1996 Annual Report on Form 10-K at 8.

35. Sirius has faced continued opposition from the terrestrial radio industry since its inception. The radio industry opposed Sirius' efforts to create a satellite radio service, has opposed and sought to impose conditions on our use of terrestrial repeaters, and has fought our efforts to better serve our subscribers with our local traffic and weather channels.

36. Terrestrial radio has competed vigorously with us in the marketplace as well. Traditional radio continually reminds its listeners that it is "Free FM." Some broadcasters have begun to decrease the number of commercials per hour and have experimented with new formats to compete with us more directly. Several major radio companies recently banded together to launch an advertising campaign designed to present the benefits of terrestrial radio over satellite radio.

37. The radio industry has been working for several years on a digital radio, an initiative that it calls "HD Radio." The terrestrial digital initiative will increase the number and variety of channels available over the air and will provide digital sound. The intent to compete with satellite radio is clear—the "HDRadio" website describes terrestrial digital radio as "New Music, New Sounds with No Subscription Fee."[1] Indeed, the largest radio companies in the United States have joined into the HD Radio Alliance in order to enhance terrestrial radio's ability to compete with us. The members of the Alliance include ABC Radio, Beasley Broadcast Group, Bonneville International, CBS Radio, Citadel Broadcasting, Clear Channel, Cumulus, Emmis, Entercom and Greater Media.[2] The Alliance has launched what it describes as a "Massive Marketing

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[1] SIR Ex. 2-A

[2] SIR Ex. 2-B

Campaign" to which it has devoted $200 million.[3] Many of the terrestrial digital channels will be aired without commercials for the foreseeable future.

38. Of course, this major competitor has a tremendous competitive advantage. Terrestrial radio gets to play sound recordings for free.

39. We also compete with XM every day. We compete for subscribers, for advertisers, for retail radio space, for promotion by automakers, on issues of radio design, and for exclusive programming.

Music and Talk/Sports Roles in Sirius' Programming

40. Sirius originally attempted to market itself as the world's best music service. The company discovered that was not and would not be a successful strategy. Simply programming music does not drive people to pay $12.95 per month.

41. Music is ubiquitous. Performances of music are everywhere, and are available to the public for free (or for no perceived cost), on terrestrial radio, through their television sets, at Starbucks, and in restaurants. Sirius discovered that the public generally is not willing to pay substantial subscription fees for programming it can obtain for free.

42. Sirius recognized that, to be successful, it needed to develop compelling programming that people were willing to pay for, programming that in many cases they could not get anywhere else. Thus, Sirius began to expand its focus on non-music programming, including important deals for sports, talk and entertainment, and channels produced by Sirius exclusively for Sirius.

- On January 8, 2003, Sirius announced the debut of its two political talk channels, Sirius Right and Sirius Left;

[3] *Id.*

- On January 21, 2003, Sirius announced that it would offer live broadcasts of professional basketball games in a deal with the National Basketball Association;

- On September 22, 2003, Sirius announced that its ESPN Radio channel would cover the entire Major League Baseball playoff schedule and the World Series, live; and

- On October 2, 2003, Sirius announced that it would air up to 40 live National Hockey League games each week, continuing throughout the NHL season.

See SIR Ex. 3.

43. Then, on December 16, 2003, Sirius announced a blockbuster deal that put it firmly on the radio map. Sirius and the National Football League announced a seven-year exclusive satellite radio agreement for Sirius to broadcast all NFL games live, nationwide. On August 2, 2004, Sirius NFL Radio, a 24/7 radio channel devoted entirely to the NFL, debuted. *See* SIR Ex. 4.

44. Major talk and entertainment programming announcements continued throughout 2004, as reflected in the press releases in SIR Ex. 5.

- On January 5, 2004, Sirius announced that it would air two channels of EWTN Global Catholic Radio, one in English and one in Spanish;

- On February 27, 2004, Sirius announced the commencement of its traffic and weather report channels;

- On July 7, 2004, Sirius Patriot joined the lineup, replacing Sirius Right; and

- On August 24, 2004, an exclusive package of college football games on Sirius debuted and, on August 31, Sirius announced the creation of Sirius College Sports Radio, featuring a package of play-by-play programming from topped-ranked colleges.

45. On October, 6, 2004, Sirius shocked the radio world when it announced "The Most Important Deal in Radio History," bringing the leading personality in radio, Howard Stern, exclusively to satellite radio, beginning January 1, 2006. SIR Ex. 6. Although the deal was expensive, it has proven to be the single most important action

taken by Sirius to attract and maintain subscribers and to ensure that Sirius became the leader in satellite radio. The announcement that Howard Stern would join the Company's programming lineup created a significant increase in brand awareness for Sirius.

46. Of course, the Stern deal was not the end of Sirius' move towards talk, sports and entertainment programming.

- On November 29, 2004, Sirius announced that it would carry every game in the NCAA Men's Basketball Tournament ("March Madness") live in 2005, an agreement for 2006 and 2007 followed;
- On January 21, 2005, Sirius agreed to a multi-year extension of its agreement with the NBA which is exclusive for satellite radio;
- On February 22, 2005, Sirius and NASCAR announced that Sirius would become the exclusive satellite radio home of NASCAR starting in 2007;
- On April 18, 2005, Sirius announced its exclusive four-year agreement with lifestyle personality Martha Stewart to create a 24/7 branded Martha Stewart channel;
- In September 2005, Sirius announced an exclusive agreement with Cosmopolitan Magazine to create COSMO Radio, a 24/7 channel geared to Cosmopolitan Magazine readers;
- On January 5, 2006, Sirius announced the addition of a new Playboy Radio channel; and
- On September 26, 2006, The Catholic Channel, featuring talk, live daily Mass from St. Patrick's Cathedral in New York, Notre Dame football and other lifestyle features, debuted on Sirius;

See SIR Ex. 7. And these are just some of the major deals for news, talk and sports programming Sirius announced.

47. Our strategy has paid off. When Sirius tried to sell the music we were a second class brand, with limited brand awareness, trailing significantly in the marketplace. That all changed with our focus on high-profile news, sports and entertainment programming.

48. As of December 2003, only 8% of adults aged 18-55 could identify Sirius when asked to identify satellite radio companies, and only 20% responded that they had heard of Sirius when specifically asked. By December 2004, those numbers had risen to 32% unaided and 47% aided; by December 2005, the numbers had risen to 47% unaided and 67% aided; and by September, 2006, the numbers were 54% unaided and 75% aided.

49. In 2003, only 32% of satellite radio purchases at retail were Sirius. That number increased to 45% in 2004, 53% in 2005, and 57% by September, 2006.

50. This trend and focus has continued. Our most recent earnings release (on August 1, 2006) featured a number of programming initiatives, all news, talk, sports, and entertainment, including: The Catholic Channel; a radio news bureau with Variety, the "show business bible," originating from Variety's Los Angeles offices; a weekly two-hour series featuring dynamic and compelling interviews by broadcasting icon Barbara Walters from her 30-year archive of interviews; a live, weekly three hour health and wellness call-in talk show on Saturday mornings hosted by Deepak Chopra, the best-selling author and leader in the field of mind and body medicine; and new talk shows featuring leading sports personalities Jerry Rice, Tiki Barber, and Tony Stewart. SIR Ex. 8.

51. Even our music programming is characterized by our need to provide a compelling experience that is not available elsewhere. As Steven Blatter testifies, it is not just about playing programmed music in sequence, like some cable radio services and most Internet webcasters provide. The goal is for each channel to have its own "personality" and sound that draws listeners, with a combination of music, information, discussion, and other features. Among other things,

- On September 20, 2006, we announced a groundbreaking deal with the Metropolitan Opera to create "Metropolitan Opera Radio," which will broadcast live performances (including opening nights), and archival performances from the Met's 75-year history.

- Our Faction channel has sought out leading personalities from the action sports world, including Lance Armstrong, Tony Hawk, Bode Miller and Johnny Mosely, to program and appear on our Faction channel, a "music" channel that also features interviews, discussions, call-ins and other talk programming.

- We seek out exclusive branded music channels, such as Radio Margaritaville, featuring Jimmy Buffett; Shade 45, programmed by hip-hop megastar Eminem; E Street Radio, featuring the music of Bruce Springsteen; Rolling Stones Radio, and The Who Channel.

- These channels feature more than just recorded music. For example, the Who Channel features interviews with the band's members, historic performances, behinds the scenes tour access, fan-based recordings, and broadcasts of the shows on their current tour; Rolling Stones Radio features interviews with the band; and Radio Margaritaville includes live concerts, backstage access and interviews.

See SIR Ex. 9.

52. In short, the right to perform music under the statutory license is just one of many inputs into our music programming, which itself is only a part of our overall programming line-up. We do not believe that the right to perform music is what separates Sirius from the many other outlets of music performances available to our subscribers and potential subscribers.

Conclusion

53. Sirius has built an entirely new audio service for the public. Sirius has been required to carve out and pay for space in a crowded regulated field, the company has created its own transmission network, from broadcast studio, to uplink, to satellite, to terrestrial repeater, to antennas, chip sets and radios designed specifically for Sirius, all at huge costs. Sirius has had to convince (often for a steep price) automakers to put Sirius

radios in their cars and retailers to carry Sirius radios in their stores. At every step, Sirius has faced and assumed enormous risks.

54. Sirius has paid millions of dollars, and is willing to pay millions of dollars more, to the record companies for a performance right for which our primary competition—terrestrial radio—does not have to pay. However, any fee must account for the enormous costs incurred, risks faced and investments made by Sirius, and for the fact that our revenues must cover a host of functions that other licensees do not perform. The fee must also recognize the relative value of the many programming inputs we use, for both our music and non-music channels, and properly account for those that attract and keep listeners. Sound recording performances are available everywhere, for free. The right to make those performances, at issue in this proceeding, does not drive our revenues.

55. I have reviewed the fee proposal made by Sirius and XM in this case. I believe it is a reasonable proposal that this Court should adopt.

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Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services	)	**Docket No. 2006-1 CRB DSTRA**

DECLARATION OF MEL KARMAZIN

I, Mel Karmazin, declare under penalty of perjury that the statements contained in my Written Direct Testimony in the above-captioned matter are true and correct to the best of my knowledge, information and belief. Executed this 30th day of October 2006 at New York, New York.

Mel Karmazin