

## Debt Structure

# XM SATELLITE RADIO HOLDINGS INC(XMSR)

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## **Company Profile**

### ***Business***

We are America's leading satellite radio service company, providing music, news, talk, information, entertainment and sports programming for reception by vehicle, home and portable radios nationwide and over the Internet to over 9.1 million subscribers. Our basic monthly subscription fee is \$12.95. We believe XM Radio appeals to consumers because of our innovative and diverse programming, nationwide coverage, many commercial-free music channels and digital sound quality.

Our channel lineup includes more than 170 digital channels of choice from coast to coast. We broadcast from our studios in Washington, DC, New York City, including Jazz at Lincoln Center, the Country Music Hall of Fame in Nashville and in Chicago. We have added new and innovative programming to our core channel categories of music, sports, news, talk and entertainment.

Our target market includes the more than 240 million registered vehicles including the 16.1 million new cars sold each year as well as the over 110 million households in the United States. In addition, some of our recent and upcoming product offerings focus on the portable and wearable audio segments. Broad distribution of XM Radio through new automobiles and through mass market retailers is central to our business strategy. We are the leader in satellite-delivered entertainment and data services for new vehicles through partnerships with General Motors, Honda/Acura, Toyota/Lexus/Scion, Hyundai and Nissan/Infiniti, among others, and available in more than 140 different vehicle models for model year 2008. XM radios are available under various brand names at national consumer electronics retailers, such as Best Buy, Circuit City, Wal-Mart, Target and other national and regional retailers, as well as through our website. These mass market retailers support our line of car stereo, home stereo, plug and play and portable handheld products.

### ***Employees***

As of December 31, 2007, we had 1,059 employees. In addition, we rely upon a number of consultants, other advisors and outsourced relationships. The extent and timing of any increase in staffing will depend on the availability of qualified personnel and other developments in our business. None of our employees are represented by a labor union, and we believe that our relationship with our employees is good.

## **Properties**

<b>Location</b>	<b>Purpose</b>	<b>Own/Lease</b>
Washington, DC	Corporate headquarters, studio/production facilities	Own
Washington, DC	Data center	Own
Merrifield, VA	Office and support facilities	Lease
Deerfield Beach, Florida	Office and technical/engineering facilities	Lease
New York, New York	Office and studio/production facilities	Lease
New York, New York	Studio/production facilities @ Jazz at Lincoln Center	Lease
Nashville, Tennessee	Studio/production facilities @ the Country Music Hall of Fame	Lease
Chicago, Illinois	Studio/production facility	Lease

The corporate headquarters and data center located in Washington, DC are subject to mortgage liens in favor of the equity owner of the lessor of the transponders of our XM-4 satellite.

The Company's four satellites are in geostationary orbits. In February 2007, we entered into a sale leaseback transaction with respect to the transponders on XM-4. The lease term for the XM-4 transponders is nine years with an early buy-out option in year five and a buy-out option at the end of the term. The Company also has approximately 800 terrestrial repeaters in operation to ensure XM signal coverage.

## **Legal Proceedings**

We are currently subject to claims, potential claims, inquiries or investigations, or party to legal proceedings, in various matters described below. In addition, in the ordinary course of business we become aware from time to time of claims, potential claims, inquiries or investigations, or may become party to legal proceedings arising out of various matters, such as contract matters, employment related matters, issues relating to our repeater network, product liability issues, copyright, patent, trademark or other intellectual property matters and other federal regulatory matters.

## **Litigation and Arbitration**

*Copyright Royalty Board Arbitration* — In December 2007, the Copyright Royalty Board (“CRB”) issued its determination and order setting the royalty rate payable by XM under the statutory license covering the performance of sound recordings over the XM system for the six-year period starting in January 1, 2007 and ending December 31, 2012. Under the terms of the CRB Satellite Radio Services decision, XM will pay a performance license rate of 6.0% of those gross revenues subject to the fees for 2007 and 2008, 6.5% for 2009, 7.0% for 2010, 7.5% for 2011 and 8.0% for 2012. The revenue that is subject to royalty fees includes subscription revenue from our subscribers and advertising revenues from channels other than those that use only incidental performances of music. Other exclusions and deductions from revenue subject to the statutory license fee include but are not limited to revenue from channels, programming and products or other services offered for a separate charge where such channels use only incidental performances of sound recordings, revenue from equipment sales, revenue from current and future data services, fulfillment service fees and bad debt expense.

## **Debt Profile**

### ***Long-Term Debt***

Certain of the Company's debt instruments and credit facilities contain covenants that include restrictions on indebtedness, mergers, limitations on liens, limitations on dividends, liquidations and sale and leaseback transactions, and also require the maintenance of certain financial ratios. The Company was in compliance with all of its covenants as of December 31, 2007. The Company's debt instruments and credit facilities permit the debt issued thereunder to be accelerated upon certain events, including the failure to pay principal when due under any of the Company's other debt instruments or credit facilities subject to materiality thresholds.

#### ***9.75% Senior Notes due 2014***

The aggregate principal balance of the unsecured 9.75% Senior Notes due 2014 outstanding as of December 31, 2007 is \$600 million. Interest is payable semi-annually on May 1 and November 1 at a rate of 9.75% per annum. The notes are unsecured and will mature on May 1, 2014. The Company, at its option, may redeem the notes at declining redemption prices at any time on or after May 1, 2010, subject to certain restrictions. Prior to May 1, 2010, the Company may redeem the notes, in whole or in part, at a price equal to 100% of the principal amount thereof, plus a make-whole premium and accrued and unpaid interest to the date of redemption. The notes are subject to covenants that, among other things, require the repurchase of the notes at 101% of principal amount in the event of a change of control, and limit Inc.'s ability and the ability of certain of Inc.'s subsidiaries to incur additional indebtedness; pay dividends on, redeem or repurchase Inc.'s capital stock; make investments; engage in transactions with affiliates; create certain liens; or consolidate, merge or transfer all or substantially all of Inc.'s assets and the assets of Inc.'s subsidiaries on a consolidated basis.

#### ***1.75% Convertible Senior Notes due 2009***

The aggregate principal balance of the 1.75% Convertible Senior Notes due 2009 outstanding as of December 31, 2007 is \$400 million. Interest is payable semi-annually at a rate of 1.75% per annum. The remaining principal balance is payable in December 2009. The notes may be converted by the holder, at its option, into shares of the Company's Class A common stock initially at a conversion rate of 20.0 shares of Class A common stock per \$1,000 principal amount, which is equivalent to an initial conversion price of \$50.00 per share of Class A common stock (subject to adjustment in certain events), at any time until December 1, 2009.

#### ***Senior Floating Rate Notes due 2013***

The aggregate principal balance of the unsecured Senior Floating Rate Notes due 2013 outstanding as of December 31, 2007 is \$200 million. Interest is payable quarterly on May 1, August 1, November 1 and February 1 at a rate currently set at 9.4113% per annum through February 1, 2008. Thereafter, the rate is reset quarterly to 450 basis points over the three-month LIBOR. The notes are unsecured and will mature on May 1, 2013. The Company, at its option, may redeem the notes at declining redemption prices at any time on or after May 1, 2008, subject to certain restrictions. Prior to May 1, 2008, the Company may redeem the notes, in whole or in part, at a price equal to 100% of the principal amount thereof, plus a make-whole premium and accrued and unpaid interest to the date of redemption.

The notes are subject to covenants that, among other things, require the repurchase of the notes at 101% of principal amount in the event of a change of control, and limit Inc.'s ability and the ability of certain of Inc.'s subsidiaries to incur additional indebtedness; pay dividends on, redeem or repurchase Inc.'s capital stock; make investments; engage in transactions with affiliates; create certain liens; or consolidate, merge or transfer all or substantially all of Inc.'s assets and the assets of Inc.'s subsidiaries on a consolidated basis.

#### ***10% Senior Secured Discount Convertible Notes due 2009***

The aggregate principal balance of the 10% Senior Secured Discount Convertible Notes due 2009 outstanding as of December 31, 2007 is \$33.2 million. Interest accreted through December 31, 2005 and is thereafter payable semi-annually at a rate of 10% per annum, while the remaining principal balance is payable in December 2009. At any time, a holder of the notes may convert all or part of the accreted value of its notes at a conversion price of \$3.18 per share. At any time on or after December 21, 2006, the Company may require holders of the notes to convert all, but not less than all of the notes at the conversion price of \$3.18 per share if: (i) shares of Class A common stock have traded on the NASDAQ National Market or a national securities exchange for the previous 30 trading days at 200% of the conversion price, (ii) the Company reported earnings before interest income and expense, other income, taxes, depreciation (including amounts related to research and development) and amortization greater than \$0 for the immediately preceding quarterly period for which the Company reports its financial results, (iii) immediately following such conversion, the aggregate amount of the Company and its subsidiaries' indebtedness is less than \$250 million, and (iv) no shares of the Company's Series C convertible redeemable preferred stock remain outstanding. The notes are secured by substantially all of Inc.'s assets, including the stock of Inc.'s FCC license subsidiary. In addition, the Notes are guaranteed by the Company, rank equally in right of payment with all of Inc.'s other existing and future senior indebtedness, and are senior in right of payment to all of Inc.'s existing and future subordinated indebtedness.

#### ***Debt of Consolidated Variable Interest Entity***

On February 13, 2007, the Company entered into a sale-leaseback transaction with respect to the transponders on the XM-4 satellite, which was launched in October 2006 and placed into service during December 2006. The Company sold the XM-4 transponders to Satellite Leasing (702-4) LLT ("Trust"), a third-party trust formed solely for the purpose of facilitating the sale-leaseback transaction. The Trust pooled the funds used to purchase the transponders from a \$57.7 million investment by an equity investor and the \$230.8 million in proceeds from the issuance of its 10% senior secured notes due 2013 ("Debt of consolidated variable interest entity"). The Company is accounting for the sale and leaseback of the transponders under sale-leaseback accounting with a capital lease, pursuant to SFAS No. 13, *Accounting for Leases*, as amended. Furthermore, the Company determined that the Trust is a variable interest entity, as that term is defined under FIN No. 46(R), and that the Company is the primary beneficiary of the Trust. Pursuant to FIN No. 46(R), the Company consolidated the Trust into its Consolidated Financial Statements.

## Material Exhibits

Exhibit 10.1

EXECUTION COPY

### THIRD AMENDMENT

This Third Amendment (this "Third Amendment"), dated as of \_\_\_\_\_, 2008, is among XM Satellite Radio Inc. (the "Borrower"), XM Satellite Radio Holdings Inc. ("Holdings"), the undersigned lenders party to the Credit Agreement referred to below (the "Lenders") and the Administrative Agent party to the Credit Agreement referred to below.

Reference is made to that certain Credit Agreement, dated as of May 5, 2006 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, Holdings, the lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent (the "Administrative Agent"), Credit Suisse Securities (USA) LLC, as Syndication Agent, Citicorp North America Inc., as Documentation Agent, and J.P. Morgan Securities Inc. and UBS Securities LLC, as Joint Bookrunners and Joint Lead Arrangers. Capitalized terms used but not defined herein have the meanings given such terms in the Credit Agreement.

The Borrower and Holdings have notified the Administrative Agent that MLB has requested that the Borrower provide to MLB and its agent party to the MLB Contract up to \$120.0 million of credit enhancement in connection with the Borrower's payment obligations under the MLB Contract to replace the credit enhancement that is currently in place. The Borrower and Holdings have requested that the Administrative Agent and the Lenders, in connection with the foregoing, agree to amend the Credit Agreement to make the changes set forth herein.

Accordingly, the Lenders and the Administrative Agent hereby agree to amend the Credit Agreement as set forth herein:

1. Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in proper alphabetical sequence:

"MLB Letter of Credit" means each letter of credit (a) that is issued in connection with the MLB Contract for the benefit of MLB and/or the other MLB-related counterparties to the MLB Contract and (b) that has a stated maturity date no later than the date that is 135 days after the Third Amendment Effective Date.

"MLB Letter of Credit Cash Collateral" means cash of the Borrower that is deposited with the issuer of an MLB Letter of Credit while such MLB Letter of Credit is outstanding to secure the reimbursement obligations of the Borrower under such MLB Letter of Credit in an aggregate amount for all such MLB Letters of Credit not to exceed \$126,000,000 (plus any interest thereon accrued with respect to such amount over a period not to exceed three months) at any time.

"Third Amendment" means that certain Third Amendment dated as of \_\_\_\_\_, 2008 among Holdings, the Borrower, the Administrative Agent and the Lenders listed on the signature pages thereto.

"Third Amendment Effective Date" has the meaning assigned to such term in Section 5 of the Third Amendment.

2. Section 1.01 of the Credit Agreement is hereby amended by replacing clause (z) of the definition of "Permitted Liens" with the following:

"(z) Liens (i) either (x) on cash in an amount not to exceed \$120,000,000 (plus any interest thereon accrued with respect to such amount over a period not to exceed three months) at any time that is deposited into an escrow account to serve as credit enhancement for the Borrower's obligations under the MLB Contract or (y) in respect of the MLB Letter of Credit Cash Collateral and (ii) on the MLB Intellectual Property, in each case, incurred in connection with the MLB Contract while such agreement is in effect."

3. Section 6.01(b) of the Credit Agreement is hereby amended by deleting the "and" at the end of clause (xiii) thereof, adding an "and" at the end of clause (xiv) thereof, and adding a new clause (xv) at the end thereof as follows:

"(xv) the incurrence by the Borrower of one or more MLB Letters of Credit in an aggregate face amount not to exceed \$120,000,000 at any time for all such MLB Letters of Credit."

4. Section 6.09 of the Credit Agreement is hereby amended and restated in its entirety as set forth below:

"The Borrower shall not permit its unrestricted cash and Cash Equivalents and Available Commitments of all Lenders at any time to be less than (a) solely during the period beginning on the Third Amendment Effective Date and ending on the date that is 90 days thereafter, \$50,000,000 in the aggregate, and (b) at all other times, \$75,000,000 in the aggregate."

5. The amendments included in this Third Amendment shall be effective when the Administrative Agent shall have received a counterpart signature page of this Third Amendment duly executed by each of the Loan Parties and each of the Required Lenders (the date on which such condition is satisfied, the "Third Amendment Effective Date").

6. The Borrower hereby agrees to pay a fee (the "Amendment Fee") to the Lenders executing this Third Amendment on or prior to 1:30 PM New York time on \_\_\_\_\_, 2008 in an aggregate amount equal to 0.125% of such Lenders' outstanding Commitments as of the Third Amendment Effective Date, which Amendment Fee shall be received by the Administrative Agent no later than 4:30 PM New York time on \_\_\_\_\_, 2008 for distribution to such Lenders.

7. Each Guarantor is referred to herein as a "Loan Support Party" and collectively as the "Loan Support Parties", and the Loan Documents to which they are a party are collectively referred to herein as the "Loan Support Documents". Each Loan Support Party hereby acknowledges that it has reviewed the terms and provisions of the Credit Agreement and this Third Amendment and consents to the amendment of the Credit Agreement effected pursuant to this Third Amendment. Each Loan Support Party hereby confirms that each Loan Support Document to which it is a party or otherwise bound and all Collateral encumbered thereby will continue to guarantee or secure, as the case may be, to the fullest extent possible in accordance with the Loan Support Documents the payment and performance of all "Obligations" under each of the Loan Support Documents to which it is a party (in each case as such terms are defined in the applicable Loan Support Document). Each Loan Support Party acknowledges and agrees that each of the Loan Support Documents to which it is a party or otherwise bound shall continue in

\*\*\*Confidential treatment has been granted for certain portions of this exhibit. The portion of this exhibit designated as [\*\*\*] have been omitted pursuant to the confidential treatment order. The omitted portions have been filed separately with the Securities and Exchange Commission.

## Exhibit 10.63

### THIRD AMENDED AND RESTATED DISTRIBUTION AND CREDIT AGREEMENT

THIS AGREEMENT, entered into and effective originally as of July 7, 1999, is hereby amended and restated as of this 6<sup>th</sup> day of February, 2008, by and among General Motors Corporation, a Delaware corporation ("GM"), XM Satellite Radio Holdings Inc., a Delaware corporation ("Holdings"), and XM Satellite Radio Inc., a Delaware corporation ("XM") and a wholly owned subsidiary of Holdings. This amended and restated Agreement amends and restates that certain Second Amended and Restated Distribution Agreement, dated as of January 28, 2003, as subsequently amended, by and between OnStar Corporation, a Delaware corporation that is a wholly owned subsidiary of GM ("OnStar"), XM and Holdings (the "Original OnStar Distribution Agreement"), and that certain Credit Agreement, dated as of January 28, 2003 and as subsequently amended, by and between XM, Holdings and GM (the "Original GM Credit Facility").

#### RECITALS:

- A. XM provides an S-band Satellite Digital Audio Radio Service in the Territory pursuant to a license from the FCC.
- B. GM is a large manufacturer of automobiles, and through its subsidiaries (including OnStar) provides high-technology value-added services for automobile applications, including GPS systems, emergency call systems, and others.
- C. XM desires that GM include XM Receivers in GM Vehicles.
- D. GM desires to install XM Receivers in GM Vehicles and to distribute the XM Service exclusively during the Term.
- E. On April 19, 2006, the Parties amended the Original OnStar Distribution Agreement, among other things, to: (i) provide for a right of XM to defer payments owing to OnStar as Distributor under the Original OnStar Distribution Agreement until December 31, 2009 in an amount not to exceed \$150 million; and (ii) eliminate the ability of XM to pay up to \$35 million of Subscriber Incentive payments in stock.
- F. On April 19, 2006, the Parties amended the Original GM Credit Facility to increase the Loan Commitment amount to \$150 million and released the security interest thereunder, provided that prior to the next draw the Lender shall be granted a new second priority security interest subject to a first priority security interest granted to the lenders under XM's new credit facility or granted under other Permitted Indebtedness.
- G. In order to clarify the legal, economic and financial relationship among the Parties and OnStar, the Parties and OnStar entered into an Assignment, Assumption and Consent Agreement effective as of May 1, 2006 (the "Assignment Agreement") pursuant to which OnStar assigned all of its rights and obligations under the Original OnStar Distribution Agreement to GM, and XM released OnStar of all of its obligations thereunder.

H. The Parties agreed to amend and restate the Original GM Credit Facility and the Original OnStar Distribution Agreement to combine them into one agreement, and the parties wish to enter into this Agreement to effect such amendment and restatement.

#### AGREEMENT:

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### 1. DEFINITIONS:

In addition to the terms defined elsewhere in this Agreement, and unless the context otherwise requires, the defined terms set forth below and used in this Agreement shall have the following meanings:

“Advance” has the meaning set forth in Section 13(a)(i) of this Agreement.

“Affiliate” or “affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control,” as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; provided that beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control. For purposes of this definition, the terms “controlling,” “controlled by” and “under common control with” shall have correlative meanings.

“Agreement” means this Agreement, including Attachments hereto, which, by this reference, are incorporated in their entirety herein, as it may from time to time be amended, supplemented or modified in accordance with its terms.

“Agreement Guarantee” means (1) the Agreement Guarantee entered into by XM Leasing Subsidiary in favor of the Lender and (2) the Agreement Guarantee entered into by the Parent Guarantor in favor of the Lender and (3) any other guarantee entered into in favor of the Lender pursuant to Section 13(j) hereof.

“Applicable Margin” means a rate per annum equal to 8%.

“Assignment Agreement” has the meaning set forth in Recital G of this Agreement.

“Authorized XM Manufacturer(s)” means a manufacturer(s) licensed from time to time by XM to produce XM Receivers for the OEM vehicle radio market.

“Bandwidth Extension Year” means each calendar year ending after the Term during which Distributor installs a number of XM Receivers in GM Vehicles not less than the average annual number of XM Receivers installed by Distributor in GM Vehicles under this Agreement through the end of the preceding calendar year.