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STAMP & RETURN

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED

In re application of:)
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Secret Communications II, LLC)
)
Assignor)
)
and)
)
Clear Channel Broadcasting Licenses, Inc.)
)
Assignee)
)
For Assignment of License of)
WFCB, Chillicothe, Ohio)
Facility ID No. 52042)

JUL 15 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No. BALH-20010918AAP

To: The Commission

SUPPLEMENT TO PETITION TO DENY

David Ringer, by counsel, hereby submits this supplement to his petition to deny the application to assign the license of WFCB (FM) (formerly WKKJ), Chillicothe, Ohio from Secret Communications II, LLC to Clear Channel Broadcasting Licenses, Inc. ("Clear Channel").

Background

On November 8, 2001, David Ringer filed a petition to deny the above referenced application. In his petition, Mr. Ringer described a set of circumstances under which Clear Channel emerged as the real party in interest not only behind the Chillicothe station, but also behind several front companies that own multiple radio stations including, Concord Media Group, Inc. ("Concord Media"), Youngstown Radio Licensee, LLC ("Youngstown Radio") and

Chase Radio Properties, LLC ("Chase Radio").¹ Ostensibly each of these companies operates as an independent radio broadcast entity. In fact, they are all controlled by Clear Channel. As demonstrated in the petitions to deny and associated pleadings, Clear Channel controls virtually every aspect of these front companies' operations, including programming, management, engineering and preparing and filing FCC forms and applications. Clear Channel takes all the revenues from these stations and assumes all the risks and benefits for any profits or losses. Clear Channel is the real party in interest behind Concord Media, Youngstown Radio and Chase Radio.

On June 12, 2002 Spanish Broadcasting System, Inc. ("SBS") filed a lawsuit against Clear Channel and Hispanic Broadcasting Corporation ("HBC") in United States District Court Southern District of Florida, Miami Division. A copy of the Complaint is attached hereto as Exhibit 1. HBC is the largest Spanish-language radio owner/operator in the United States, with fifty-five stations serving sixteen markets. Clear Channel claims it owns a 26% non-voting equity interest in HBC. A non-voting shareholder's interest is supposed to be passive and therefore non-cognizable for purposes of the FCC's multiple ownership rules. As SBS's suit demonstrates, Clear Channel has actively participated in the management and operational affairs of HBC. Clear Channel's conduct, therefore, is clearly active and attributable.²

Clear Channel's activity in the affairs of HBC is relevant in the context of the Chillicothe Petition to Deny, because it demonstrates a pattern of conduct in which Clear Channel conceals, through numerous material misrepresentations to the FCC, the actual ownership and control of

¹ See also, Petition to Deny filed on January 2, 2002 by M&M Broadcasters, Ltd. against the assignment of license of KBRQ, Waco Texas from Chase Radio to Clear Channel.

² See, *In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd. 12559, 12568-69 (1999).

certain radio station groups, including HBC. As such, HBC must be counted in the same class of front companies as Concord Media, Youngstown Radio and Chase Radio.

Clear Channel Actively Manages the Affairs of HBC

The allegations in the SBS lawsuit clearly demonstrate a pattern of active participation in the affairs of HBC on the part of Clear Channel and its principals. For example, L. Lowry Mays, Clear Channel's Chairman and Chief Executive Officer negotiated on behalf of HBC to purchase SBS's radio stations. Randal Mays, Clear Channel's Executive Vice President and Chief Financial Officer, met with Jason Shrinsky, SBS's communications counsel, to discuss Clear Channel's "continuing interest in acquiring SBS for HBC."³ As the complaint states:

Mays suggested to Shrinsky at that meeting that HBC wanted to buy SBS at a considerably lower price than that previously discussed. After Shrinsky told Mays that such a proposal was not a basis for discussion, Mays told Shrinsky that if SBS did not accept CC's [Clear Channel's] offer CC "will ultimately buy SBS on the bankruptcy court steps."⁴

The Complaint sets forth the various actions Clear Channel and its principals took on behalf of HBC to make good on Mays's threat. For example, in an effort to undermine SBS's initial public offering ("IPO"), Randall Mays called Lehman Brothers to tell them not to go ahead with the IPO. Mr. Mays further told Lehman Brothers that SBS's Chairman and Chief Executive Officer was "a drug user and/or trafficker." Randall Mays also called in the investment banking firm of B T Alex Brown ("BTAB") to say that if it participated in the SBS IPO, it would endanger the \$30 million in annual fees it received from Clear Channel and HBC. When Clear Channel was unable to stop the IPO, the Complaint goes on to detail the steps Clear Channel principals took to depress the SBS's stock price. The Complaint claims that Clear Channel

³ Exhibit 1, Complaint at para. 17.

⁴ Id.

principals actively participated in a scheme to induce institutional investors to sell their holdings in SBS stock.

Below are some additional examples of Clear Channel's active participation in the management and operation of HBC, as mentioned in SBS's Complaint:

Other occasions on which CC has exercised control over HBC include the negotiations of the purchase of El Dorado Broadcasting in Texas, the purchase of WNWK-FM in Newark, the negotiation of national representative agreements for HBC stations (including the inducement of Katz Hispanic Media to terminate its contract with SBS), discussions with SBS concerning whether SBS would be allowed to bid on stations that CC was required to spin off in order to acquire AMFM, the movement of CC personnel (including General Managers) to HBC stations and the ongoing discussions between CC personnel and Univision (the largest Spanish-language television broadcaster in the United States) concerning the potential merger of Univision and HBC.⁵

The issues raised in the SBS lawsuit represent only the tip of the iceberg concerning Clear Channel's control over the management of HBC. Other available evidence supports SBS's claim that Clear Channel has misrepresented its true control over, and involvement in, HBC. As in the case of Concord Media, Youngstown Radio and Chase Radio, the filings Clear Channel made with the FCC on behalf of HBC contradict its claim that it is a passive, non-voting shareholder.

Attached hereto as Exhibits 2, 3, 4 and 5 are FCC Form 395B, Broadcast Station Annual Employment Reports, filed on behalf of HBC⁶. These four employment reports cover various stations in the areas of McAllen, Texas, El Paso, Texas, Los Angeles, California and Las Vegas, Nevada. On each employment report the mailing address of the HBC subsidiary is provided as 200 East Basse Road San Antonio, Texas. As discussed in Mr. Ringer's Petition to Deny and

⁵ Complaint para. 25.

⁶ They are filed on behalf of HBC subsidiaries Tichenor License Corporation, HBC License Corporation and KLSQ-AM License Corporation.

Reply, 200 East Basse Road is the corporate headquarter of Clear Channel. "Rick Wolf, VP, Corporate Counsel" certified under penalty of perjury that the information on these forms is true. It has been established that Rick Wolf is Clear Channel's vice president and corporate counsel. Mr. Wolf apparently believes that as Clear Channel's corporate counsel he had the authority to prepare and file these forms on behalf of HBC.

Exhibits 6 through 13 attached hereto are FCC Form 395B, Broadcast Station Annual Employment Reports, filed by Clear Channel or one of its subsidiary corporations. These employment reports, divided into regional clusters, set forth the call signs and location of stations where Clear Channel has its employees. Each of these reports lists the mailing address of the licensee as 200 East Basse Road, San Antonio, Texas and is executed by Rick Wolf in his capacity as Clear Channel's vice president and corporate counsel. Each of these reports also lists one or more stations licensed to HBC. The employment reports provide irrefutable evidence that Clear Channel employees are present at most if not all of HBC's stations.

The employment report filed for Clear Channel's San Diego, California cluster is typical.⁷ The report shows that Clear Channel has 259 full-time and 99 part-time employees working at 12 stations in its San Diego station cluster.⁸ Two of these Clear Channel stations KLNK (FM) and KLQV (FM), are actually licensed to HBC. Clear Channel offers no explanation why an ostensibly passive, non-voting shareholder should have its employees at HBC stations.

Clear Channel has a strong motive to misrepresent and conceal the control it exercises over the operations and management of HBC. Again, Clear Channel's San Diego cluster is instructive in demonstrating a pattern of conduct. Section 73.3555 of the Commission's Rules

⁷ Exhibit 6 hereto.

⁸ The employment report does not include the two Tijuana, Mexico radio stations serving San Diego that Clear Channel controls.

provides that the most radio stations a party can own, operate or control is 8, not more than 5 of which are in the same service. Clear Channel's San Diego employment report (Exhibit 6) shows that Clear Channel has its employees working in nine FM radio stations and three AM stations.⁹ If Clear Channel's interest in HBC is attributable, then Clear Channel is in willful violation of the Commission's multiple ownership rules and of US Department of Justice guidelines on revenue concentration in a radio market.

Clear Channel has engaged in a scheme to conceal from the FCC and the Department of Justice the extent of control it exercises over certain supposedly independent radio companies. The allegations in the SBS suit and the attached employment reports support Mr. Ringer's allegations that Clear Channel willfully and illegally owns, controls and operates radio stations, in markets where it is barred from openly holding itself out as the owner of these radio stations because of FCC or Department of Justice restrictions. Clear Channel has made a mockery of the Commission's multiple ownership rules. To support its scheme it has knowingly made numerous material misrepresentations to the Commission and other agencies of the federal government. Clear Channel cannot be trusted to tell the truth and therefore cannot be trusted to act in the public interest.

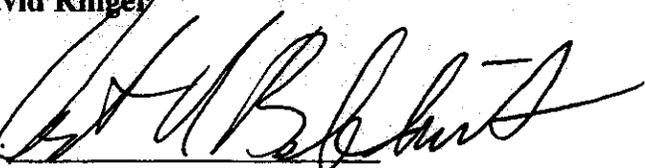
Mr. Ringer requests that the Commission investigate these serious charges. If, after a full opportunity for hearing, the Commission finds that Clear Channel has engaged in a scheme to conceal its ownership interests in numerous radio stations and companies licensed to operate radio stations, then the Commission should find that Clear Channel, its officers and directors are not qualified to be Commission licensees. It should revoke Clear Channel's licenses and ban Clear Channel and its officers and directors from ever again holding FCC broadcast licenses.

⁹ One of the stations Clear Channel operates in San Diego is KSDO a station ostensibly owned by Chase Radio. However as set forth in the Petition to Deny the assignment of KBRQ, Waco Texas (see note 1 hereto) Chase Radio is nothing more than the alter ego of Clear Channel.

Respectfully Submitted,

David Ringes

By:


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July 15, 2002

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

02-21755

CIV. SEITZ

MAGISTRATE JUDGE
RANDSTRA

SPANISH BROADCASTING)
SYSTEM, INC.,)

Plaintiffs,)

CLEAR CHANNEL)
COMMUNICATIONS, INC.,)
and HISPANIC BROADCASTING)
CORPORATION,)

Defendants.)

Case No.: _____

COMPLAINT

COMES NOW Plaintiff Spanish Broadcasting System, Inc., and for its Complaint against Defendants Clear Channel Communications, Inc. and Hispanic Broadcasting Corporation, states:

THE PARTIES

1. Plaintiff Spanish Broadcasting System, Inc. ("SBS") is a corporation existing under the laws of Delaware, with its principal place of business in Coconut Grove, Florida.
2. Defendant Clear Channel Communications, Inc. ("CC") is a corporation existing under the laws of Delaware, with its principal place of business in San Antonio, Texas.
3. Defendant Hispanic Broadcasting Corporation ("HBC") is a corporation existing under the laws of Delaware, with its principal place of business in Dallas, Texas. On information and belief, since its formation on February 14, 1997, at least 26% of the capital stock of HBC (including 100% of the Class B shares) has been owned by CC.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1337, because it is an action brought, *inter alia*, under the antitrust laws of the United States.

5. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over other claims that are so related to claims in the action within the original jurisdiction of the Court that they form part of the same case or controversy.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District.

DEFENDANTS' PREDATORY CONDUCT

7. Defendant CC, by far the largest radio company in the United States with 1213 stations in over 300 markets, understands its dominance of the radio industry. CC's web site, without any undue modesty, describes CC's role in the industry as follows: "Clear Channel is radio." (Emphasis in original.)

8. Defendant HBC is the largest Spanish-language radio owner/operator in the Continental United States with 55 stations serving 16 markets. Defendant CC owns 26% of the Class A shares (including 100% of the Class B shares) of Defendant HBC.

9. Plaintiff SBS is the country's only independent Hispanic-owned radio operator, with 15 stations in 7 markets in the Continental United States.

10. The top 10 markets in the Continental United States for Spanish-language radio are Los Angeles, New York, Miami, Chicago, Houston, San Francisco, Dallas, San Antonio, Phoenix, and Brownsville. SBS currently operates radio stations in all of those markets except for Houston, Phoenix and Brownsville. HBC currently operates radio stations in all of those markets.

11. SBS and HBC are the leading companies in the operation of Spanish-language radio stations in those markets.

12. SBS was founded in 1983. HBC resulted from the 1997 merger of two predecessor Spanish-language radio companies (Hefel Broadcasting Corporation – owned by CC – and Tichenor Media System, Inc.). SBS and HBC have expanded rapidly in the past few years. That growth has paralleled the recent rapid growth of the Hispanic population in the United States.

13. In order to grow at that pace, SBS has been required to raise capital through public debt and equity offerings. Because radio stations may operate in the United States only if they hold licenses from the Federal Communications Commission ("FCC"), and because most of the limited number of licenses for FM stations in the top 10 Spanish-language radio markets were long ago licensed to English-language stations, which only infrequently are offered for sale, the growth of SBS has been limited by its ability to raise enough capital to acquire stations if and when they become available for sale.

14. In contrast to SBS, HBC has benefited from the financial resources and market supremacy of its parent CC. Throughout the past six years, the broadcasting investment industry has referred in glowing terms to the many "benefits" available to HBC as a result of its relationship with its corporate parent CC as HBC's "halo" (or the "CC halo effect"). For example, even before HBC was created in early 1997, CC assigned to Heftel the \$10 million option to acquire KSCA-FM in Los Angeles that it misappropriated from SBS (*see* Para. 21 a., *infra*), and CC loaned \$40 million to Tichenor Media to enable it to purchase two FM radio stations in northern California.

15. Since it began in 1996 to work on the formation of HBC, CC has both independently and together with HBC taken anti-competitive actions to adversely affect SBS – HBC's principal competitor – and prevent SBS from competing on a level playing field with HBC.

16. CC took those steps after it was unsuccessful in making SBS the third leg of CC's merger between Heftel and Tichenor Media. On August 22, 1996 (only six weeks after the Heftel-Tichenor Media merger documents were signed), CC's Chairman and Chief Executive Officer L. Lowry Mays and HBC's Chairman and Chief Executive Officer McHenry Tichenor, Jr. sought and held a meeting with Raul Alarcon, Jr. (Chairman, President and Chief Executive Officer of SBS) and SBS Attorney Jason Shrinsky as part of an unsuccessful effort by CC and/or HBC to acquire SBS before SBS became a public company.

17. CC and HBC continued their efforts to acquire SBS in late October 1996, when Randall Mays (Executive Vice President and Chief Financial Officer of CC and the son of CC's founder and Chairman and Chief Executive Officer Lowry Mays) scheduled a meeting with Shrinsky of SBS, during a media conference they both attended, to discuss CC's continuing interest in acquiring SBS for HBC. Mays suggested to Shrinsky at that meeting that HBC wanted to buy SBS at a considerably lower price than that previously discussed. After Shrinsky told Mays that such a proposal was not a basis for discussion, Mays told Shrinsky that if SBS did not accept CC's offer, CC "will ultimately buy SBS on the bankruptcy court steps."

18. During December 1996, after CC had acquired Heftel and while the merger of Heftel and Tichenor was pending, CC took the first of many steps in realizing Mays' threat and succeeded in injuring SBS by inducing Katz Hispanic Media to breach its long-term contract as SBS' national sales representative in order to become HBC's national sales representative. (As a result of CC's August 30, 2000, merger with AMFM Radio, Inc. ("AMFM"), CC acquired ownership of Katz Media Group, the largest media representation firm in the United States and the parent of Katz Hispanic Media. On February 28, 2002, HBC and Katz Hispanic Media announced that they had formed a joint marketing organization - HBC Sales Integration, Inc.)

19. Since being rebuffed in their various efforts through the years to acquire SBS, Defendants CC and HBC have continued to interfere with SBS' attempts to raise capital to finance its acquisition of stations. Among the wrongful acts in which CC and HBC have engaged are the following:

a. On beginning work on its initial public offering ("IPO") in May 1999, SBS selected Lehman Brothers as sole lead manager and selected Merrill Lynch, CIBC and BT Alex Brown ("BTAB") to be the co-managers of SBS' IPO.

b. In the Summer of 1999, when the IPO was being readied for the market, Randall Mays called Elizabeth Satin (a Managing Director of Lehman Brothers who was working on the SBS IPO). In no uncertain terms, Randall Mays told Satin not to go ahead with the SBS IPO because Alarcon was a drug user and/or drug trafficker. When Satin asked Mays

why he was focusing exclusively on SBS and not on other Spanish-language radio competitors (such as Radio Unica, which was also launching an IPO at that same time), Randall Mays dismissed the notion that HBC had other competitors and also told Satin that SBS was "the only real competitor to HBC" in the Spanish-language radio market. Mays' unexpected and disparaging allegations precipitated a hysterical call from Satin to Shrinsky inquiring whether Mays' assertions were true. Shrinsky had to travel to New York to meet with Satin and Roman Martinez of Lehman. Shrinsky told them that he had known and worked with the Alarcon family for many years, represented that there was no truth in the allegations, and urged Lehman to investigate the allegations. Lehman did so and found them without merit, and the IPO of SBS proceeded.

c. When BTAB was being considered for the SBS IPO underwriting syndicate, Alarcon had inquired whether BTAB's ongoing work for CC/HBC constituted a conflict and had been assured by Jeff Amling of BTAB (now co-head of the Global Media Investment Banking Group of BTAB's successor Deutsche Banc Alex Brown) that it did not. SBS then selected BTAB instead of alternative co-manager candidates (including Goldman Sachs and Salomon Brothers) and BTAB officially joined the SBS IPO underwriting syndicate.

d. However, a few weeks later (in late July or early August of 1999), Jeff Amling and Drew Marcus of BTAB called Alarcon and Joseph Garcia (the Executive Vice President and Chief Financial Officer of SBS). Amling was emotional and livid in describing to Alarcon and Garcia a telephone call he had received from Randall Mays, who made it clear to Amling that BTAB could not participate in the SBS IPO without endangering its \$30 million in annual fees from CC and HBC. Amling stated that as a result of Randall Mays' threats, BTAB was left with no choice but to withdraw from its IPO work for SBS, leaving only Lehman, Merrill and CIBC in the SBS underwriting syndicate. Roman Martinez, who led Lehman Brothers' work on the SBS IPO, told Alarcon that in his 30 years in the investment banking business, he had never seen a firm agree to participate as a lead underwriter, come to due diligence meetings and then back out at the request of a competitor of the offeror. In fact, prior

to Randall Mays' call, BTAB had actively sought participation in the SBS IPO, was excited at the prospect of joining the underwriting syndicate, and had acted as an established leader in radio sector public offerings in seeking to be included in the SBS IPO syndicate. One call from Randall Mays, reminding Amling of CC's financial stranglehold on BTAB's media group, was enough to unhook BTAB from its commitment to participate in the IPO of an HBC competitor and to cause BTAB to act against what -- absent Mays' threat -- was in BTAB's own best interests.

e. On August 13, 1999, in an attempt to cause CC and HBC to cease their anti-competitive behavior and allow the SBS IPO to proceed, Alarcon sent Lowry Mays of CC and Tichenor of HBC a letter complaining about the wrongful actions then known to have been taken by Randall Mays and perhaps others on behalf of HBC and CC to prevent SBS from realizing its IPO. Alarcon's letter was dismissed and never answered by either CC or HBC. Despite Alarcon's written protest, which included specific instances of wrongdoing by CC and HBC that, if left uncorrected, could lead to litigation, CC and HBC continued their actions against SBS.

20. Because CC and HBC were unable to prevent SBS' IPO, Defendants thereafter took steps to depress the price of SBS stock in order to achieve several goals, including making it more difficult for SBS to raise additional financing and compete vigorously with HBC and to lower the price that HBC and CC would have to pay to achieve what had always been their ultimate goal -- the acquisition of SBS and its elimination as a competitive threat to HBC's dominance of the top 10 markets for Spanish-language radio. Among the wrongful acts in which CC and HBC have engaged are the following:

a. CC and HBC sought to limit or eliminate coverage of SBS stock by leading securities analysts. For example:

i. Although Drew Marcus of BTAB, a leading radio analyst, had promised Alarcon in the telephone call in which BTAB withdrew from the underwriting syndicate that he would make it up to SBS by covering the SBS stock, the promised coverage has

never materialized. On information and belief, that failure of coverage resulted from the continuing concern of BTAB that CC and/or HBC would act on their threat of economic retaliation.

ii. During the SBS IPO, Lehman's broadcasting analyst (Tim Wallace) attended due diligence meetings in anticipation of and preparation for contemplated coverage of SBS. Lehman had persuaded SBS that Lehman should be the lead manager, among other factors, because of Wallace's importance as a radio analyst. In the Summer of 1999, however, Wallace left Lehman to join Bank of America, which was given a prominent role in a November 1999 \$249 million equity offering for HBC. Bank of America had no previous leading role in HBC financings. On information and belief, Wallace's departure was orchestrated by CC and/or HBC. Consequently, even though Lehman was the lead underwriter on the SBS IPO, Lehman provided no coverage of SBS by a radio analyst for many months after the IPO. As a result, during this crucial pre/post-IPO period, SBS was left with only one radio broadcasting analyst to cover its stock.

iii. Even after Lehman hired William Meyers in June 2000 as a radio analyst and he began covering SBS, CC and HBC continued to attempt to eliminate that coverage. For example, Jeffrey Hinson (Senior Vice President and Chief Financial Officer of HBC) called Meyers and stated that he did not want Meyers covering SBS and threatened that HBC would not provide Meyers with normal analyst access to HBC if he continued to do so.

iv. The efforts of CC and HBC to limit equity analyst coverage of SBS have been successful. A number of other Spanish-language radio and television companies have greater coverage than SBS. On information and belief, the more limited coverage afforded SBS has resulted from pressure placed on those analysts and the investment banks they worked for by CC and/or HBC, which, *inter alia*, threatened that if such coverage were provided, CC and/or HBC would withhold business from the analysts' employers. The limited coverage of SBS stock has had the effect (intended by CC and HBC) of depressing the price of SBS stock below the level that it otherwise would enjoy. To this date, SBS is still only covered by the two

analysts -- Meyers of Lehman and Keith Fawcett of Merrill -- who work for SBS' lead underwriters. The goal of CC and HBC in preventing SBS from getting broader equity analyst coverage was to adversely impact SBS' stock price to prevent SBS from being able to compete more vigorously with CC and HBC by making strategic station acquisitions and to reduce the cost of an acquisition of SBS by CC and HBC.

b. In February 2001, HBC initiated discussions with SBS that culminated in HBC's April 4, 2001 offer to acquire the stock of SBS at a price that was less than the break-up value of SBS. Those discussions and that offer were subject to a confidentiality agreement between SBS and HBC which, on information and belief, HBC breached in discussions with SBS' institutional investors. SBS turned down HBC's offer in early May 2001.

c. After the HBC offer was rejected by SBS, HBC also sought to get investors to sell their SBS stock in a further attempt to depress the price of SBS stock to make it more difficult for SBS to compete with HBC and to reduce the price that CC and HBC would have to offer to acquire SBS. During May and June 2001 -- immediately after the HBC offer had been declined by SBS -- those wrongful actions led to the extraordinarily high turnover of the public float of SBS' stock during that two-month period. Not coincidentally, during the same period, HBC's own stock rose from \$15.69 per share on April 3, 2001 (the day before the confidential merger proposal was presented to SBS) to \$24.75 per share on May 31, 2001, increasing 58% during the same period when a massive amount of SBS stock was being dumped. On information and belief, this unprecedented activity in both the SBS and HBC securities resulted from CC/HBC's wrongful and intentional manipulation of the market -- actions which constituted a breach of the confidentiality agreement that governed the negotiations and consisted of untrue statements concerning SBS' future prospects. Those actions were taken in furtherance of the continuing goal of CC and HBC -- acquiring SBS -- as demonstrated by the May 31, 2001 letter of Tichenor to Alarcon, in which Tichenor reiterated HBC's continuing desire to acquire SBS on the terms previously discussed.

i. Until it sold a significant portion (over 90%) of its SBS holdings of over 3 million shares in the second quarter of 2001, Putnam Investment Management, Inc. was the second largest institutional SBS shareholder. According to Meyers of Lehman, Tichenor and Hinson of HBC had visited a number of institutional investors in the Boston area (including Putnam) and disparaged SBS to Putnam and otherwise induced Putnam to sell most of its SBS holdings. Putnam is now the second largest HBC institutional holder (with over 7 million shares, or about 9% of the publicly traded Class A common shares).

ii. Until it sold all of its SBS holdings in the second and third quarters of 2001, Janus Capital Corp. held nearly 2 million shares and was the fourth largest institutional SBS shareholder. On information and belief, those sales also resulted from disparaging remarks concerning SBS or other inducements made to Janus by CC and/or HBC. Janus is now the fourth largest institutional investor in HBC (with nearly 3 million shares, or about 4% of the publicly traded Class A common shares).

iii. Other large institutional holders of SBS stock (e.g., Capital Guardian Trust Company, High Rock Capital Management, Crabbe Huson Group, Inc., Awad Asset Management, Stein Roe & Farnham, and Brinson Partners, Inc.) also sold most or all of their SBS holdings in the second and/or third quarters of 2001. On information and belief, those sales also resulted from disparaging remarks concerning SBS or other inducements made to those institutional holders by CC and/or HBC.

iv. On information and belief, disparaging remarks made to institutional holders by Tichenor and Hinson of HBC included false and misleading statements about SBS' financial condition and commercial success. Those HBC officers also told SBS' institutional investors that SBS had turned down HBC's merger proposal, that HBC intended to outspend and undercut SBS in order to "take it out of the picture", and that HBC would be as aggressive as it could be – both over and under the table – and do whatever it took to eliminate SBS as a competitor. HBC's strategic mandate was expressed clearly and forcefully to the SBS

institutional investors: since the acquisition of SBS was not possible, HBC was going to destroy SBS.

v. The goal of CC and HBC was to induce institutional investors to sell their holdings of SBS stock. The sales of SBS stock by institutional investors has had the effect of depressing the price at which SBS stock would otherwise be valued in the marketplace. As a result of the successful campaign by CC and HBC to adversely impact SBS' stock price, CC and HBC have achieved their goals of preventing SBS from being able to compete more vigorously with CC and HBC and of reducing the cost of an acquisition of SBS by CC and HBC.

21. CC and HBC have also attempted wrongfully to keep SBS from acquiring radio stations or to engage in bidding wars solely for the purpose of making it more expensive for SBS to acquire those stations. Among the wrongful acts in which CC and HBC have engaged are the following:

a. In 1996, after SBS developed and pursued an innovative proposal to operate a radio station (KSCA-FM) owned by Golden West Broadcasters (the broadcasting arm of Gene Autry) and to acquire the station after his death (which would reduce the seller's taxes), Lowry Mays of CC (acting on behalf of HBC) wrongfully misappropriated that business opportunity from SBS in the middle of its negotiations with Golden West. CC acquired the option on KSCA-FM (which SBS had painstakingly crafted, during months of negotiations) on December 23, 1996, and then assigned that option to HBC as part of the February 1997 Hefel-Tichenor Media merger that created HBC. KSCA-FM is now HBC's highest rated station in Los Angeles. SBS had to wait several years (until November 2000) to acquire another station of equal coverage in the Los Angeles area, but at a substantially increased price of nearly \$150 million more than the Golden West station.

b. In March 1997, SBS acquired two radio stations (WXDJ-FM and WRMA-FM) that were for sale in Miami. SBS had reached an agreement with the seller on the transaction and then Lowry Mays of CC (acting on behalf of HBC) attempted to get the seller to sell the stations instead to HBC. SBS had to pay a higher price for those stations because of

Mays' interference. On information and belief, the purpose of Mays' activity was either to drive up the price paid by SBS or to have HBC misappropriate from SBS the opportunity to acquire the stations. The only way SBS was able to secure the transaction was to offer a multimillion dollar contract to the seller of the two stations to serve as Chief Operating Officer of SBS.

c. In November 2000, SBS entered into an asset purchase agreement with the International Church of the FourSquare Gospel (founded by Aimee Semple McPherson) in Los Angeles. That transaction provided SBS with the radio coverage in the Los Angeles area that it had lost to HBC in the Golden West transaction. (The Golden West and FourSquare stations are both "high-power" FM stations that have broad geographic coverage and rarely become available for sale.) Prior to that transaction, when Hinson of HBC learned that SBS was bidding for the station (KFSG-FM, now KXOL-FM), HBC made a higher offer to FourSquare and engaged in a bidding war with SBS. Hinson also contacted FourSquare's broker in the deal (Randy George of Sterling Associates), requested information concerning the negotiations that Hinson knew was confidential and stated that HBC would be there if SBS defaulted on the deal. Even though George advised Hinson that he could not provide the confidential information requested, Hinson nevertheless continued to request that information from George. Hinson also contacted George even after SBS had signed its agreement with FourSquare, including during the period in which CC and HBC were attempting to acquire SBS. SBS was able to end that bidding war only by offering \$1 million over any competitive bid, which enabled the FourSquare's Board of Directors to satisfy its fiduciary obligation to sell to the highest bidder. The price for that station was driven up as a result of HBC's interference. On information and belief, the purpose of HBC's activity was to drive up the price paid by SBS rather than to have HBC acquire the station. To this day, CC and/or HBC have continued their aggressive attempts to tortiously interfere with the pending transaction for KXOL-FM. Since August 2000, HBC has engaged in an unceasing campaign to disrupt the KXOL-FM transaction, with the specific goal of tortiously interfering with existing agreements between SBS and FourSquare. This interference has consisted of continuing HBC contacts with FourSquare's broker Randy George, as well as with FourSquare

itself, in order to propose an alternative HBC transaction and thus misappropriate SBS' opportunity, in which SBS has already invested \$30 million. In late January 2002, HBC made a proposal to FourSquare, offering the use of an HBC station in Los Angeles, as a further enticement for FourSquare's abandoning the SBS transaction and in a further attempt to create other obstacles for SBS to finance the FourSquare transaction.

d. The Los Angeles market is important to HBC (representing about 40% of its cash flow) and SBS's entry into the Los Angeles market by the acquisition of the FourSquare station has resulted in vigorous competition between SBS and HBC in that market, with SBS gradually gaining market share. Tichenor contacted Alarcon on the eve of the debut of SBS' KXOL-FM and proposed "a merger of equals." On February 7, 2001, as part of those discussions, Tichenor said to Alarcon, "This war must end." That comment quickly led to the unsuccessful effort made by CC and HBC to acquire SBS, described earlier in Paragraph 20.b. On information and belief, CC and/or HBC obtained confidential information concerning SBS in connection with the FourSquare negotiations and other SBS proprietary information from Julio Rumbaut (a media broker), who was seeking employment at SBS from Alarcon. Throughout the years, Rumbaut has served as a representative of CC and HBC and as a liaison to Randall Mays in other attempts by CC and HBC to acquire SBS. During these discussions, Rumbaut was in frequent email and telephone contact with Randall Mays of CC and insisted to Alarcon that Randall Mays of CC, not Tichenor of HBC, was the person who would make the critical decisions on a potential merger between HBC and SBS.

22. CC and HBC have also attempted to injure SBS by inducing employees under contract to SBS to breach their contracts and work for HBC. For example, in June 2000, the three morning drive show hosts of SBS's station WXDJ-FM in Miami, who had each signed three-year contracts (with one-year non-compete clauses) in early 2000, quit without notice, worked for HBC's internet subsidiary for one year in order to circumvent the non-compete provisions of their contracts (which only limited their radio employment), and then in June 2001 became on-air hosts of HBC's morning drive show on WRTO-FM in Miami. Another example

is that in the Summer of 2001, Bill Tanner (the Executive Vice President of Programming of SBS) was approached by HBC's Chief Operating Officer Gary Stone, who tried to entice Tanner (and through Tanner, Luis Albertini, General Manager of SBS' Los Angeles stations) to leave SBS.

23. CC effectively controls HBC because CC has veto power over critical HBC activities. According to the HBC March 3, 1997 Certificate of Incorporation, CC has veto power on any plan or proposal by HBC to:

- a. sell or transfer all or substantially all of its assets or merge with another entity where HBC's pre-merger shareholders would not own at least 50% of the capital stock of the surviving entity;
- b. issue any shares of preferred stock;
- c. amend HBC's certificate of incorporation to adversely affect the shareholder rights of CC's class of stock;
- d. declare or pay any non-cash dividends or any non-cash distribution; and
- e. amend the articles of incorporation concerning HBC's capital stock.

24. In order to increase the number of stations that CC could control beyond the legal limit permitted by the FCC, CC misrepresented to the FCC that: (a) CC did not control HBC; (b) CC's 26% stock ownership interest in HBC is passive; and (c) CC would have no say in determining the composition of the HBC Board of Directors. CC has circumvented those representations to the FCC, thereby negating the regulatory review that permitted CC's ownership of its HBC interest. For example, HBC's five-man Board of Directors still has at least two "independent" members who were appointed by CC to the original HBC Board. Those same two "independent" directors have formed the special committee that passed on the fairness of the Tichenor Media - Heftel merger, and one of those "independent" directors received fees and compensation from CC for banking services rendered to CC in connection with its original tender offer to Heftel. CC's and HBC's blatant disregard of federal law was reflected in CC's anti-competitive scheme to transfer ownership of radio stations in Denver, Phoenix and Austin to

HBC as "divestitures" required by the FCC in order for CC to close on its acquisition of AMFM on August 30, 2000. However, that plan was thwarted when the U.S. Department of Justice determined that CC and HBC were sufficiently related entities that CC could not sell the stations to HBC and forced CC to find other buyers. The previously described activities of Lowry Mays and Randall Mays of CC, acting on behalf of HBC, demonstrate that CC acts for and controls HBC. Other occasions on which CC has exercised control over HBC include the negotiations of the purchase of El Dorado Broadcasting in Texas, the purchase of WNWK-FM in Newark, the negotiation of national representation agreements for HBC stations (including the inducement of Katz Hispanic Media to terminate its contract with SBS), discussions with SBS concerning whether SBS would be allowed to bid on stations that CC was required to spin off in order to acquire AMFM, the movement of CC personnel (including General Managers) to HBC stations and the ongoing discussions between CC and Univision (the largest Spanish-language television broadcaster in the United States) concerning the potential merger of Univision and HBC.

25. CC leverages its market power in radio and other areas of commerce to benefit CC and HBC in all those areas of commerce. CC describes itself as "a global leader in the out-of-home advertising industry" including "radio and television stations, outdoor displays and entertainment venues.." CC has acknowledged that "[b]y seizing the natural relationship between radio and live events, Clear Channel Entertainment leverages the marketing and promotional strength of Clear Channel's Radio and Outdoor advertising platforms.." CC's web site trumpets recent additions to its already entrenched market power: "Clear Channel made radio history in the year 2000, collecting strategic acquisitions and completing mergers designed to provide the company with a unique, unduplicated collection of assets that cannot be reproduced at any price." CC's web site points to the AMFM merger and CC's acquisition of SFX as important parts of CC's additional growth in market power and ominously forecasts that CC will continue to misuse its market power: "The opportunities for synergies among all these Clear Channel divisions are explosive . . . and are in the very early innings." CC, by its interlaced control of venue promoters, radio stations and billboards, has attempted to preclude or

has succeeded in precluding its competitors from competing on a level playing field with CC and its related entities.

a. For example, CC's August 1, 2000, \$4.4 billion acquisition of SFX, one of the largest outdoor venue companies (for concerts and outdoor events), particularly in top 10 Spanish-language markets, has been used to freeze out other promoters and radio stations from those concert venues as a result of the SFX acquisition. (SFX – now known as Clear Channel Entertainment – produced over 25,000 shows and events in 2000, describes itself as “the world’s leading promoter and marketer of live entertainment, . with an unparalleled network of over 135 event venues” and boasts that “only one company has the resources to do so much for so many.”)

b. Another example involves Clear Channel Entertainment’s attempts to get a 50% owned advertising subsidiary to abandon SBS and only advertise on HBC. In early January 2002, Ivan Fernandez of Cardenas-Fernandez Associates (an Hispanic market entertainment promoter that is 50% owned by CC Entertainment) met with Rodney Eckerman of CC Entertainment in Los Angeles to discuss business opportunities for 2002. During the meeting, Eckerman recommended that Cardenas-Fernandez advertise its concerts and events on HBC’s radio stations. Eckerman telephoned Tichenor and directed Fernandez to meet with Tichenor to discuss HBC’s participation in Cardenas-Fernandez’s 2002 business. Subsequently, on January 25, 2002, Fernandez met with Tichenor at the HBC headquarters in Dallas as directed by Eckerman. During that meeting, Tichenor suggested the hiring of a liaison to better coordinate business between HBC and Cardenas-Fernandez. Fernandez agreed that he would make every attempt to work with HBC. However, Cardenas-Fernandez has continued to attempt to place its advertising to optimize its results (and thus has continued to place some of its advertising on SBS stations). As a result, Cardenas-Fernandez has received pressure from CC Entertainment and HBC to discontinue advertising on SBS stations. HBC’s Miami General Manager (Claudia Puig) has called CC Entertainment to complain when a Cardenas-Fernandez event is advertised on an SBS station to attempt to get CC Entertainment to force Cardenas-

Fernandez to switch its advertising from SBS stations to HBC stations. If, as appears likely, Cardenas-Fernandez will ultimately be forced by CC Entertainment to cease advertising on SBS stations and advertise instead on HBC stations, SBS will suffer economic harm. Cardenas-Fernandez' total advertising on SBS stations totaled approximately \$1.6 million in 2001. CC's attempt to direct its entertainment division to utilize HBC as its sole advertising vehicle (thereby causing economic harm to SBS) is another example of CC's using its market power (in collusion with HBC) to harm SBS, to steal away SBS' long-time client and to force that client to spend its advertising budgets on HBC stations.

c. Similarly, CC's ownership of over 770,000 outdoor advertising displays has provided HBC with an anti-competitive advantage over SBS in advertising its radio stations.

d. CC has recognized that its market power has exceeded its maximum legal ownership (under FCC regulations) of radio stations and has "parked" stations that CC owned with other companies in order to circumvent FCC limitations on ownership of the number of stations that one company could own in a local market. (CC's parking of stations practices recently led Congressman Howard Berman to write the Department of Justice and the FCC concerning CC's predatory practices and to seek House Judiciary Committee hearings on that subject.)

FIRST CAUSE OF ACTION
(Sherman Act, 15 U.S.C. §2)

26. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

27. As a result of the foregoing activities by Defendants, Plaintiff has been injured in its business and property in violation of Section 2 of the Sherman Act, 15 U.S.C. §2, by virtue of the attempted monopolization by Defendants of the top 10 markets for Spanish-language radio in the United States. Defendants' predatory and anticompetitive conduct has been undertaken as part of their specific attempt to monopolize those markets and there is a dangerous probability that Defendants will succeed in those efforts.

SECOND CAUSE OF ACTION
(Sherman Act, 15 U.S.C. §1)

28. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

29. As a result of the foregoing activities by Defendants, which have conspired with each other in restraint of trade and otherwise engaged in unfair competition with Plaintiff, Plaintiff has been injured in its business and property in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

THIRD CAUSE OF ACTION
(Florida Antitrust Act, F.S.A. §542, *et seq.*)

30. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

31. As a result of the foregoing activities by Defendants, Plaintiff has been injured in its business and property in violation of the Florida Antitrust Act, F.S.A. §542, *et seq.*, by virtue of the attempted monopolization by Defendants of the top 10 markets for Spanish-language radio in the United States. Defendants' predatory and anticompetitive conduct has been undertaken as part of their specific attempt to monopolize those markets and there is a dangerous probability that Defendants will succeed in those efforts.

FOURTH CAUSE OF ACTION
(Florida Antitrust Act, F.S.A. §542, *et seq.*)

32. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

33. As a result of the foregoing activities by Defendants, which have conspired with each other in restraint of trade and otherwise engaged in unfair competition with Plaintiff, Plaintiff has been injured in its business and property in violation of the Florida Antitrust Act, F.S.A. §542, *et seq.*

FIFTH CAUSE OF ACTION

(California Unfair Competition Act, Cal. Bus. & Prof. Code Sec. 17200, *et seq.*)

34. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

35. As a result of the foregoing activities by Defendants, which have conspired with each other in restraint of trade and otherwise engaged in unfair competition with Plaintiff, Plaintiff has been injured in its business and property in violation of the California Unfair Competition Act, Cal. Bus. & Prof. Code Sec. 17200, *et seq.*

SIXTH CAUSE OF ACTION

(Cartwright Act, Cal. Bus. & Prof. Code Sec 16720 *et seq.*)

36. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

37. As discussed above, Defendants, acting in concert and with the purpose and intent of destroying competition, have undertaken a course of predatory and anticompetitive conduct as part of their specific attempt to monopolize the top 10 markets for Spanish-language radio in the United States and there is a dangerous probability that Defendants will succeed in those efforts. By virtue of Defendants' concerted efforts Plaintiff has been injured in its business and property in violation of the Cartwright Act, Cal. Bus. & Prof. Code §16720, *et seq.*

SEVENTH CAUSE OF ACTION

(Tortious Interference)

38. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

39. As discussed more fully above, Defendants knowingly, intentionally and without justification interfered with the business relationships of Plaintiff and as a result Plaintiff has been injured in its business and property.

EIGHTH CAUSE OF ACTION
(Defamation)

40. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

41. As more fully discussed above Defendants knowingly or at the very least negligently, made false statements about Plaintiff in order to induce third parties to take actions that would cause damage to Plaintiff, and Plaintiff has been injured in its business and property as a result of Defendants' defamation.

NINTH CAUSE OF ACTION
(Injurious Falsehood)

42. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

43. Defendants made false statements to third persons, knowing the statements to be false, or at the very least in reckless disregard of their truth or falsity. Defendants made the false statements with the intent of harming the business and property of Plaintiffs, and Plaintiff was in fact injured in its business and property thereby.

TENTH CAUSE OF ACTION
(Breach of Confidentiality)

44. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 25.

45. Under the confidentiality agreement between Plaintiff and Defendant HBC, Defendant HBC owed Plaintiffs a duty of confidentiality. As more fully discussed above, Defendant HBC breached that duty in that Defendant HBC wrongfully communicated information it acquired pursuant to that agreement to third parties. Defendant HBC's breach of confidentiality resulted in injury and damage to Plaintiff.

WHEREFORE, Plaintiff demands that judgment be taken against Defendants in the amount of its damages to be determined at trial, that Plaintiff also be awarded treble damages and its attorney's fees and other costs of this action to the extent those remedies are authorized by the statutes or common law on which Plaintiff's causes of action are based, that Defendants be enjoined from undertaking any further actions in connection with their violation of law as set

forth above, and that Plaintiff be awarded such other and further relief as to the Court deems just and proper.

Dated: Hollywood, Florida, June 12, 2002.

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