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September 8, 2006

Filed Electronically in MM Docket No. 99-325

Marlene H. Dortch, Secretary
Federal Communications Commission
Washington, DC 20554

Re: **Written *Ex Parte* Submission to the Secretary
MM Docket No. 99-325**

Dear Ms. Dortch:

The Livingston Radio Company ("Livingston") has been served with *ex parte* written presentations in the above-referenced proceeding made by Clear Channel Communications, Inc. ("Clear Channel") on May 15, 2006, and by CBS Radio, Inc. ("CBS") on August 18, 2006, each purporting to rebut earlier showings made by Livingston that severe interference is expected to result from IBOC digital operation by FM broadcast stations that are authorized to transmit with grandfathered facilities exceeding the maximum power/height limitation for their class.¹ The studies submitted by both Clear Channel and CBS are extremely unscientific and certainly cannot be accepted by the Commission as probative of anything at all, one way or the other.

Clear Channel's submission addresses interference to WHMI-FM itself from Clear Channel's super power Station WBCT. Based on the operation of portable and automobile radios at 11 locations, Clear Channel reports no significant perceptible interference to WHMI-FM. The observation points were supposedly in areas where Livingston has complained of interference. However, a survey of 11 discrete points based on informal listening does not prove anything and certainly would not be accepted by the Commission as a record basis to support any rule making decision. When the Commission entertains field strength measurements on FM stations, it imposes rigorous requirements, including an adequate distribution of equally-spaced radials, uniform

¹ See Comments filed June 16, 2004; Errata filed June 18, 2004; and *Ex Parte* notices filed September 8, 2004, October 21, 2004, May 24, 2005, August 9, 2005, and January 26, 2006.

distance intervals, representative types of terrain, and a specified antenna height. Most importantly, measurements must be made over a 30-meter mobile run or else in a cluster of at least five fixed points, with the maximum signal recorded. *See* Section 73.314 of the Commission's Rules. Clear Channel's observations do not even close to complying with these scientific regulatory standards.

Livingston understands that Clear Channel did not purport to plot the measured service contours of WBCT or WHMI-FM and that its purpose was to observe perceptible interference. However, even "perceptions" require much more rigor than Clear Channel applied. It is well known that the field strength of an FM radio signal can vary by several dB between two locations in very close proximity -- even at two locations across the street from each other. Thus to go to 11 places where Livingston ostensibly complained of interference is meaningless, unless tests are conducted over mobile runs or in appropriate clusters of points. Also, it cannot be assumed that measurements taken outdoors with portable radios represent conditions typically encountered by listeners using radios indoors, where building attenuation of the signal is a significant factor -- attenuation that is not likely to be the same when the signals of two stations (super power and victim) arrive from different locations.

Livingston's President and General Manager has observed plenty of interference from WBCT to WHMI-FM, but his observations are also *ad hoc*. The point is that unless a highly scientific field study is undertaken, the Commission cannot rely on any observations at a small number of locations that are not scientifically distributed. The sophisticated computer studies previously placed on the record by Livingston are much more meaningful predictors of what is likely to happen as super powered grandfathered stations implement IBOC digital operation.²

The CBS Radio filing is no more probative. In essence, it is simply a "vote" by a large corporate multi-station licensee that it prefers to keep its grandfathered super power stations and suffer interference at its victim stations. It is notable that CBS's "victim" stations are all Class B, not Class A like WHMI-FM, and thus start off closer to par with the super powered Class B stations. CBS's one Class A victim station is predicted to receive interference but is apparently protected by terrain shielding. It should also be noted that the mileage separation required by Section 73.207 of the Rules is much less for first adjacent Class A and B stations than for two Class

² Clear Channel also argues that the Commission cannot take action on the super power problem without another opportunity for public comment. While not conceding that the Administrative Procedure Act requires such an opportunity, because there is already so much material in the record about the super power problem, Livingston has never objected to a further opportunity for public comment. However, so that a public comment period does not become in effect a way to avoid addressing the substance of the problem, any opportunity for comment must be given quickly, the comment period must be short, and the Commission must take action in response to the comments promptly afterwards.

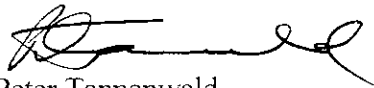
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B stations, so the signal of a super power grandfathered station should be stronger when it enters a Class A station's service area.³

CBS's claim of an absence of listener complaints is also not persuasive, especially here, where it is very difficult for a lay person to identify the source or nature of the interference. Before a listener complaint is received, the listener must (a) perceive the existence of interference, (b) understand that the problem is interference and not something else, (c) identify that interference is caused by a digital signal, (d) know where to complain, and (e) go to the trouble of making a complaint. The combination of these obstacles ensures that there will be few or no listener complaints concerning interference issues, even if many people suffer impaired reception.⁴ The more common response of a listener who has difficulty receiving a radio station is simply to tune to another station rather than trying to figure out what the problem is and how to solve it.

In sum, the Clear Channel and CBS Radio "studies" do not in any scientific way refute Livingston's careful showing and cannot be given any additional weight because of the size of the corporations submitting them. The super power problem remains real and requires direct and prompt attention by the Commission.

Very truly yours,



Peter Tannenwald
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³ Livingston also observes that the author of CBS's study is a former senior employee of iBiquity Corporation, which has an obvious stake in de-emphasizing any problems with its technology.

⁴ The interference problem is very unlike the indecency situation, where organized interest groups encourage complaints and provide filing information and sample letters, thereby ensuring a very much larger number of complaints than will ever come from listeners to victim FM stations who hear hissing or other noises under the desired audio.