CC and HBC Prevent Analysts from Covering SBS

44. Even though CC and HBC were unable to prevent SBS' IPO, SBS could have received a more favorable P O valuation without their interference. CC and HBC 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.

45. Although Randall Mays of CC testified that it "would probably be inappropriate" to do ***so*** (R. Mays Dep. 227, Tab 1), CC and HBC sought to limit or eliminate coverage of SBS stock by leading securities analysts to avoid creating investor demand for SBS' stock and thereby depress the price of SBS stock and make it impossible for SBS to tap the equity markets to finance its expansion. For example:

a. 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. That failure of coverage resulted from the continuing concern of BTAB that CC and/or HBC would act on their threat of economic retaliation. Hinson of HBC told Marcus that "we would prefer that they not" provide analyst coverage of SBS stock. (Hinson Dep. 191-193, Tab **3.)** Just before Marcus introduced SBS' representatives Alarcon and Joseph Garcia to speak on June 4,2002 at Deutsche Bank's 10th Annual Media Conference in New York City, he responded to Alarcon's inquiry as to when Marcus would commence coverage of SBS by saying, "Raul, as you know, it's been political."

b. 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. On information and belief, Wallace's departure was orchestrated by CC and/or HBC. Both Randall Mays of CC and Hinson of HBC spoke to Thomas Carter of the Bank of America and urged the hiring of Wallace; Randall Mays also told Wallace that he should accept the Bank of America's offer of employment. (R. Mays Dep. **228-235,** Tab 1; Hinson Dep. **228-236,** Tab **3.)** 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.

c. Even after Lehman hired William Meyers in June **2000** as a radio analyst and he began covering SBS, HBC continued to attempt to eliminate that coverage. For example, Hinson of HBC told Meyers 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. (Hinson Dep. **236-238,** Tab **3.)** Randall Mays, CFO of CC, testified that it would not be "appropriate" for a CFO to tell a research analyst that he would not have access to the CFO if he covered a competitor's stock. (R. Mays Dep. **227,** Tab 1.)

d. The efforts of CC and HBC to limit equity analyst coverage of SBS have been successful. HBC and other Spanish-languageradio and television companies (even ones smaller than SBS) have greater analyst 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 major analysts -- Meyers of Lebman and Keith Fawcett of Merrill -- who work for SBS' lead underwriters. In contrast, HBC -- the most similar company to SBS -- is covered by twelve analysts. 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. HBC has succeeded in that goal, because the depressed price of SBS stock has required SBS to use debt rather than equity for its station acquisitions and thereby limited its growth and potential for competition with HBC.

HBC's Summer 2000 Attempts to Induce SBS Employees To Breach Contracts

46. In the Summer of 2000, HBC attempted to injure SBS by inducing employees under contract to SBS to breach their contracts and work for HBC.

a. In June 2000, the three morning drive show hosts of SBS' 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.

b. In July 2000, a popular SBS New York morning show host informed SBS' Alarcon that he had been offered a $1 million contract by HBC COO David Lykes as an enticement to breach the remaining four years on his SBS contract. Alarcon was forced to offer the host an additional $570,000 per year (to $700,000 per year) and extend the life of his contract for an additional year.

HBC's Interference With SBS' Los Angeles Acauisition

47. Los Angeles is HBC's most important center of operations, both because of its advertising revenue base and because it has by far the largest Hispanic population in the United States. Until SBS acquired and commenced its broadcasts on MOL-FM on April 30,2001, two of HBC's stations in Los Angeles (KSCA-FM and KLVE-FM) not only were the two highest rated Spanish-language radio stations in Los Angeles, but also were the two highest rated radio stations of any type broadcasting in Los Angeles. In 1999, the advertising revenues from those two stations produced $61 million of HBC's broadcast cash flow (43% of HBC's overall broadcast cash flow) and $40 million of HBC's net revenue (32% of HBC's overall net revenue).

48. After CC acted in October 1996 to buy KSCA-FM for HBC and thereby deprive SBS of the opportunity to purchase that station (see Paragraph 24, supra), SBS had to wait four years to acquire another station of equal coverage in the Los Angeles area. On August 18,2000, SBS made an offer of $225 million or, alternatively, $1 million over any competing offer, to purchase KFSG-FM from the International Church of the Foursquare Gospel ("ICFG") in Los Angeles. That transaction would provide 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 ICFG stations are both "high-power" FM stations that have broad geographic coverage and rarely become available for

sale.) On the same day, Hinson of HBC made a significantly higher offer **($255** million) to ICFG **(Ex. 114,** Tab **16)** which, on information and belief, he knew from prior communications with ICFG's broker or Julio Rumbaut would trigger the "$1 million over" clause in SBS' proposal. HBC's **$255** million offer triggered an obligation by SBS to offer **$256** million for KFSG-FM – **$140** million more than the price that HBC had paid for KSCA-FM four years earlier. Thus HBC had orchestrated a situation in which SBS would have to pay $30 million more than the market price of KFSG-FM or, if SBS could not come up with the financing to complete the purchase, HBC would acquire the station and keep its principal competitor from making a significant inroad in Los Angeles.

49. On information and belief, CC and/or HBC obtained confidential information concerning SBS in connection with the ICFG negotiations and other SBS proprietary information from Julio Rumbaut (a media broker), who was seeking employment at SBS from Alarcon while simultaneously negotiating employment with Tichenor of HBC.

50. On November **2, 2000,** SBS entered into an asset purchase agreement with ICFG to purchase KFSG-FM (now KXOL-FM).

51. HBC knew that SBS' acquisition of the KFSG-FM would result in vigorous competition between SBS and HBC in Los Angeles. As a result, Tichenor contacted Alarcon on the eve of the debut of SBS' KXOL-FM and proposed "a merger of equals" between SBS and HBC. 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 HBC to acquire SBS.

52. 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. SBS turned down HBC's offer in early May 2001. However, HBC continued to harbor the goal of 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.

53. After it appeared unlikely, in late March 2001, that SBS would agree to HBC's proposal, HBC began planning to initiate what Hinson had termed its plan to "fight back." (Hinson Dep. 376, Tab 3.)

54. HBC acted further to plan for its attack on SBS in April 2001. One step was to hire Julio Rumbaut as an HBC "consultant." 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 the February to April 2001 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. Although both Tichenor and Hinson had been ducking Rumbaut's calls in January 2001, three months later they retained him as a "consultant" in order to obtain SBS information that would help HBC in its negotiations with SBS and in the "fight" that HBC planned to launch when SBS began broadcasting on KXOL-FM in Spanish. (R. Mays Dep. 140-151, Tab 1; Hinson Dep. 355-358, 376, Tab 3.)

HBC Induces Investors To Sell SBS Stock

55. After the HBC offer was rejected by SBS, and KXOL-FM began broadcasting in Los Angeles in Spanish, HBC 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 finance its acquisition of

KFSG-FM and otherwise compete with **HBC** and/or 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.

56. On information and belief, this unprecedented activity in both the **SBS** and **HBC** securities resulted from **HBC's** wrongful actions. On Monday, April 30,2001, Hinson was already awake in Dallas at 3:33 a.m. when he received an email informing **him** that KXOL-FM had begun Spanish broadcasting on the ICFG frequency (96.3 FM) in Los Angeles at midnight (2:00 a.m. Dallas time). Hinson testified that **HBC** knew that **SBS'** broadcasting in Spanish on that frequency signaled the start of a war between the two companies: "... We knew they were going to come at us.... We were preparing to defend and fight back....." **(Ex.** 118, Tab 17; Hinson Dep. 376, Tab 3.) Hinson flew from Dallas to Boston and met the next day with Putnam Investment Management, Inc., then the second largest institutional **SBS** shareholder. As a result of that meeting, Putnam sold over 90% **of** its SBS holdings of over 3 million shares in May and June 2001); Putnam is now the largest **HBC** institutional holder (with over 7 million shares, or about 9% of the publicly traded Class A common shares). According to Meyers of Lehman, Tichenor and Hinson of **HBC** had visited a number **of** institutional investors (including Putnam) and disparaged **SBS to** Putnam and otherwise induced Putnam to sell most **of** its **SBS** holdings. 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. (The statements of HBC's officers to **Putnam** constituted a breach of the February 22,2001, confidentiality agreement that governed the February to April 2001 negotiations and consisted of untrue statements concerning **SBS'** future prospects. 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.[8]

57. Other large institutional holders of SBS stock (including Janus Capital Corp., 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 directly or indirectly from disparaging remarks concerning **SBS or** other inducements made to **Putnam** or other institutional holders of SBS stock by HBC.

58. HBC accomplished its goal to induce institutional investors to sell their holdings of SBS stock. The sale of SBS stock by institutional investors 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 HBC to adversely impact SBS stock price, HBC has achieved its goals of preventing SBS from being able to compete more vigorously with HBC, reducing the cost of an acquisition of SBS by HBC, and making it more difficult for SBS to use its stock to acquire

HBC.

HBC and CC Attempt To Prevent SBS From Financing ICFG Transaction

59. In the Fall of 2001, Hinson launched another campaign to disrupt the KXOL-FM transaction. Between November 11,2001 and February 4,2002, Hinson contacted both ICFG and its broker Randy George, in order to propose an alternative HBC transaction and thus disrupt SBS' transaction with ICFG, on which SBS has already made non-refundable payments of $30 million to ICFG. The SBS transaction with ICFG had not yet closed, and over $200 million (then due December 31,2002, now due December 31,2003) remained to be paid by SBS to ICFG. Each of SBS and ICFG was broadcasting on frequencies owned by the other. Hinson knew that the most likely way that SBS would obtain the funds to make the future payments due to ICFG would be to sell stations, including the SBS station in San Francisco and the SBS FM station in Los Angeles on which ICFG was operating. (Hinson Dep. 404-406, Tab **3.)** Hinson's strategy succeeded in part on February 5,2003, when ICFG informed SBS that effective February 28,2003, ICFG would no longer broadcast on SBS' frequency or that ICFG would no longer be interested in purchasing that station from SBS.

60. CC has also attempted to prevent SBS from obtaining the financing necessary to close its acquisition of KFSG-FM from ICFG. On or about May 16, 2002, in retaliation for **SBS'** earlier decision to cease its network affiliation with CC on station KPTI-FM (formerly KXJO-FM) in the San Francisco Bay Area (which had formerly simulcast CC's station KSJO-FM in San Jose) and launch an English-language format that competed with CC's station KYLD-FM, representatives of CC defaced and destroyed property at KPTI-FM's studios and offices in Oakland by spray-painting the walls with obscene and pornographic messages and

leaving behind KYLD-FM flyers and bumper stickers, as well as a sarcastic letter (signed by the staff of KYLD-FM) "welcoming" KPTI-FM to the Bay Area. That vandalism was part of CC's attempt to prevent SBS from building KPTI-FM into a successful station that SBS could sell to help pay for the acquisition of KFSG-FM.

CC Dictated that HBC Would Be Sold to Univision Rather than to SBS

61. CC began to contemplate "monetizing" its interest in HBC several years ago. On May 10, 2000, according to a "Monetization Discussion" presented by Salomon Smith Barney to Randall Mays of CC, CC's holdings of HBC stock had a market value of $1.3 billion. (Ex. 74, Tab 5.) On October 26, 2000, the CC Board authorized management to proceed with the divestiture of some or all of CC's equity holdings in HBC. (Ex. 75, Tab 18.)

62. HBC was by far CC's largest publicly traded holding. CC wanted to sell its HBC stock for a publicly traded security or all cash. (Ex. 78, Tab 6.)

63. CC believed that a significant undesirable consequence of selling its HBC stock on the open market was that HBC stock is so thinly traded that the CC sales would have the effect of driving down the price of CC's remaining holdings of HBC stock. (That effect would be even more pronounced if CC received SBS stock in exchange for its HBC stock as the result of SBS' March 25, 2002 offer to purchase HBC, because SBS is even more thinly traded than HBC.) Another consideration for CC in selling its HBC stock was how to avoid or limit the taxes that it would pay on the sale. (Ex. 86, Tab 19.)

64. On February 8, 2002, Alarcon of SBS sent a letter to Lowry Mays of CC and Tichenor of HBC complaining of their companies' anti-competitive activities against SBS. (Ex. 100, Tab 20.) On March 25, 2002, Alarcon sent a letter to Tichenor proposing that SBS acquire

HBC. (Tab **21**.) Alarcon sent a copy of that letter to Lowry Mays on April **17,2002.** (Ex. **103,** Tab **22.)**

65. On March **19,2002,** Randall Mays sent an email to Andrew Hobson **of** Univision requesting that Hobson call Mays if Univision had an interest in CC's stake in HBC. Several days later, Salomon Smith Barney ("SSB"), CC's financial advisers, followed up **to** Hobson on that issue. (Ex. **89,** Tab **23.)**

66. On March **20,2002,** SSB made a presentation to Randall Mays on the monetization of CC's HBC stock, which SSB estimated had a market value of **$879** million. The SSB presentation considered a variety of issues, including how to monetize the position without losing value as a result **of** its being a thinly traded security, avoidance of paying substantial taxes on the gain, and the limited strategic interest that a buyer would have in acquiring CC's minority position. A variety of options were presented to CC for consideration. (Ex. **78,** Tab ***6.)***

67. On March **27,2002,** SSB prepared a "call script" **for** Randall Mays to use to call potential parties and solicit interest in the sale of CC's stake in HBC for a premium. The script emphasized the desirability of a stock-for-stock transaction to reduce CC's tax exposure. (Ex. **86,** Tab **19.)**

68. HBC was aware in the first quarter of **2002** that CC wanted to monetize its interest in HBC. On April **3,2002,** Tichenor of HBC sent Randall Mays a memorandum describing alternatives that HBC suggested to CC might satisfy CC's monetization desires. Randall Mays reacted adversely to that memorandum (stating "I don't like the tone **of** this letter at all" in a note to his father Lowry and his brother Mark, CC's CEO and COO, respectively) and summoned Tichenor, Hinson and Cruz of CSFB to CC's San Antonio headquarters for a meeting the next

day. (Ex. 87, Tab 24; Ex. 88, Tab 25.)

69. On April 10, 2002, Randall Mays met Andrew Hobson of Univision in Las Vegas during the National Association of Broadcasters ("NAB") convention and raised the possibility of a potential transaction between Univision and Hispanic Broadcasting. (Ex. 89, Tab 23.)

70. The first contact that HBC had with Univision in connection with the proposed transaction between them that was announced on June 12, 2002, was a telephone call from A. Jerrold Perenchio (Univision's CEO) to Tichenor on April 15, 2002 – five days after the Randall Mays meeting with Hobson in Las Vegas. (Ex. 89, Tab 23.)

71. On April 18, 2002, while his son Randall Mays (CC's CFO) was soliciting a proposal from Univision to acquire HBC, and thus to succeed in its goal of preventing SBS from acquiring HBC, Lowry Mays (CC's CEO) sent a response (Ex. 104, Tab 26) to the April 17, 2002 letter from Alarcon of SBS (Ex. 103, Tab 22) that had enclosed SBS' March 25, 2002, proposal to Tichenor that SBS acquire HBC for $1.0 billion in cash and 184.3 million shares of SBS Class A common stock. In that letter, Lowry Mays told Alarcon:

> "CC is a passive investor and can have no voice in this decision until and unless it is brought to us for a vote. This is due not only to the terms of our stockholders agreement with HBC, but more fundamentally due to FCC regulation that would risk having HBC radio stations becoming attributable to Clear Channel should we become **less** than passive in HBC events. ***So*** we must remain ever vigilant on this issue, unless, and until, it is presented to us for a vote. Only at that time an we make **our** voice heard."

The actions taken by CC from March through June 2002 in connection with the Univision and SBS proposals to acquire HBC were totally inconsistent with the standard set forth in Lowry Mays' letter to Alarcon. Lowry Mays testified that he did not know of Randall Mays' April 10, 2002 meeting with Hobson in Las Vegas when he sent the April 18 letter to Alarcon. (L. Mays

Dep. 159-190, Tab 2.)

72. On April 22,2002, Tichenor of HBC met with Alarcon **of** SBS in Houston, Texas to discuss SBS' proposal and a possible combination between HBC and SBS. That was followed two days later by a telephone conference between HBC and SBS and their respective financial advisors at CSFB and Lehman. (Ex. 89, Tab 23.)

73. The first meeting between HBC and Univision in connection with that transaction was the April 25,2002 meeting in Los Angeles between Tichenor and Hinson of HBC and Perenchio, Hobson and Robert Cahill of Univision. (Ex. 89, Tab 23.)

74. On April 30,2002, Univision and HBC commenced negotiation of the merger agreement that eventually was signed on June 12,2002. (Ex. 89, Tab 23.) HBC was aware that it could not enter into an agreement to merge with any other company without the consent **of** CC. CC had that veto right by virtue of its 100% ownership of HBC's Class B stock.

75. CC decided to use its veto rights to require HBC to enter into the transaction with Univision because Univision satisfied CC's three requirements, none **of** which was generally applicable to HBC's other shareholders:

a. Univision stock was marketable and not thinly traded, ***so*** CC could, when it elected, sell some or all of its holdings;

b. The all-stock transaction proposed by Univision was superior to CC from a tax perspective to the 50% cash, 50% stock offer of **SBS,** in that CC would not recognize any tax on the transaction until it later sold some or all of its Univision holdings; and

c. By aligning itself with Univision as an owner of 8% of Univision stock, CC could take advantage of Univision's market power derived **from** its dominance of

Spanish-language media to deny essential facilities in those areas to SBS and others in the radio business and further enhance CC's own dominance of the English-language radio business and avoid the creation of an independent merged SBS-HBC entity that could potentially threaten CC dominance of that business in the future.

76. Between May 13 and 15, 2002, Randall Mays and Lowry Mays reviewed SSB's written analysis and comparison of the SBS and Univision offers to HBC. (Ex. 91, Tab 27; Ex. 92, Tab 28; L. Mays Dep. 212-213, Tab 2.) Even though SSB conceded that the SBS offer appeared to provide greater value to HBC shareholders than the Univision offer (the SBS offer involved a 41% premium over market price, compared to a 25% premium over market price for the Univision offer), SSB recommended to CC that the Univision offer was superior for CC. That "superiority" was primarily due to considerations that applied only to CC and not to other HBC shareholders. Among SSB's points were:

a. "The combination of UVN and HSP would create the dominant Hispanic media company…."

b. "[A] combination with UVN would be the category killer in Hispanic entertainment...."

c. "CCU's ownership stake would be significantly more liquid in a UVN transaction than in a SBSA transaction and, as a result, would be easier to monetize/hedge."

77. By early June 2002, SSB had created a "wish list" for CC of items that CC would ask Univision for in exchange for CC's entering into a voting agreement with Univision that would require CC to vote for the Univision offer and not for any other offer. (Ex. 80, Tab 29.) That voting agreement was executed on June 11, 2002. Tichenor of HBC also demonstrated that the

June 12,2002 HBC decision to agree to Univision's offer, had already been made by June 3, 2002 (as directed by CC) by Tichenor's failure to implement his May 31,2002 promise to Alarcon to get back to SBS after HBC's June 4,2002, Board meeting and permit Alarcon to make a presentation of SBS' proposal to the HBC Board; Tichenor even refused to return Alarcon's telephone calls in the first eleven days of June 2002.

Injury to Competition Resulting from CC's and HBC's Conduct

78. As demonstrated above, CC and HBC have undertaken numerous wrongful acts to prevent SBS (HBC's principal competitor) from competing more effectively against HBC. CC's and HBC's exploitation of their dominance has caused injury to competition by limiting alternatives available to advertisers, performers and the listening audience.

79. CC also leverages its power in all of its areas of commerce to benefit CC and HBC. 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 has trumpeted 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 (described below) as important parts of CC's additional growth and ominously forecasts that CC will continue to misuse its 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. Those actions by CC led to Senator Feingold's introduction of the "Competition in Radio and Concert Industries Act" on June 27,2002.

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 ten Spanish-languagemarkets, 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.") Spanish-languageperforming artists (such as the crossover star Marc Anthony) who sign contracts to perform at SFX venues have been prevented from appearing on SBS radio stations to promote their shows. That results in injury to SBS, to the SBS listening audience and to advertisers that desire competitive alternatives on which they can advertise their products as part of the Marc Anthony concert tour promotion.

b. Another example involves Clear Channel Entertainment's attempts to force its 50%-owned Hispanic entertainment subsidiary to abandon SBS and only advertise on HBC. In early January 2002, Ivan Femandez of Cardenas-Femandez Associates (the 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-Femandez advertise its Hispanic concerts and events on HBC's radio stations. Eckerman telephoned Tichenor and directed Femandez to meet with Tichenor to discuss HBC's participation in Cardenas-Femandez's 2002 business. Subsequently, on January 25,2002, Femandez 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-Femandez. Femandez 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-Femandez 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-Femandez event is advertised on an SBS station to attempt to get CC Entertainment to force Cardenas-Femandez to switch its advertising from SBS stations to HBC stations. If, as appears likely, Cardenas-Femandez 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-Femandez' total advertising on SBS stations totaled approximately $1.6 million in 2001. In February 2003, CC fired Messrs. Cardenas and Femandez in apparent retaliation for their continued dealings with SBS. (Tab **30.)** 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 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. That also results in injury to the SBS listening audience and to advertisers that desire competitive

alternatives on which they can advertise their products as part of the promotion of Cardenas-Femandez' concerts and events.

c. 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.)

80. The proposed transaction by which Univision would acquire HBC would, as SSB told CC in May 2002 in recommending that transaction, "create the dominant Hispanic media company" and HBC's "combination with UVN would be the category killer in Hispanic entertainment…" (Ex. 91, Tab **27.)** The current CC/HBC dominance of radio and concert venues would be extended to Univision's dominance of Spanish-languagetelevision (in which Univision has more than an 80% market share), Spanish-language cable, Spanish-language internet (in which Univision has the top portal) and Spanish-languagerecordings. That combination would further injure Spanish-languagemedia competitors, advertisers, the listening audience and performers by restricting their alternatives. In all the manifestations of entertainment in the Hispanic world, the combined CC-HBC-Univision entity would have the power to control prices and exclude competition. That has been demonstrated already, in actions taken by Univision and HBC even before the transaction has received regulatory approval or been consummated. The most important vehicle for promoting Spanish-language radio stations

(such as those owned by SBS) is advertising on Univision television stations. Similarly the most important vehicle for promoting Spanish-language television stations (such as those owned by Univision and Telemundo) is advertising on HBC and SBS radio stations. Access to that cross-media advertising has been limited by HBC and Univision since their June 12,2002 agreement was announced. For example, Santa's Enchanted Forest, the Spanish-language edition of the Miami *Herald,* and the Broward County Performing Arts Center have all been informed of restrictions on advertising that would prevent them from advertising on SBS radio stations if they wished to advertise on Univision television stations, thereby effectively limiting their Miami-area Spanish-languageradio options to HBC stations.

81. As described above, CC and HBC have engaged in numerous anticompetitive practices that have harmed competitors and have resulted in a dangerous probability of future harm to competition. The anticompetitive practices include:

a. Creating HBC for the purpose of dominating the Spanish-language radio;

b. Preventing rivals from acquiring additional radio stations;

c. Assisting Heftel and Tichenor in acquiring additional radio stations;

d. Engaging in a predatory strategy intended to destroy their principal rival;

e. Attempting to acquire rivals at unfairly low prices;

f. Violating FCC's requirements of passivity, thereby allowing HBC an unfair advantage over its competitors by attempting to thwart FCC divestiture rules successfully placing CC directors on HBC's Board, actively pursuing and dictating HBC's choice of merger partners, and influencing HBC's financial activities; and

g. Raising rivals' costs by interfering with SBS' IPO and other attempts to raise

capital, interfering with SBS' ability to secure subsequent analyst coverage, convincing SBS employees to breach their labor contracts, tortiously interfering with other SBS contracts, and foreclosing HBC rivals from access to important performance venues, and thereby to artists.

1. The conduct of CC and HBC has directly harmed SBS, HBC's principal rival. But for the conduct of CC and HBC, SBS would have received a more favorable valuation in its IPO. It would have had more equitable access to essential inputs (such as venues and artists) that would have allowed it to attract more listeners and more advertising dollars. Although CC and HBC have not succeeded in destroying SBS altogether, they have substantially weakened HBC's most direct competitor. As a consequence, CC and HBC have substantially weakened competition. Indeed, their conduct has and will continue to affect prices for advertisements, the effectiveness of advertisements, the quality of programming, and the prices for advertisers' products.

2. Controlling Spanish-language media ultimately results in supra-competitive prices for advertisements and reduces the number of Spanish stations available. In markets with Hispanics from diverse countries of origin (*e.g.*, Mexico, Cuba, and Nicaragua), a large number of stations can provide programming that is tailored to different ethnicities. Reductions in the number of stations both reduce the inventory of available advertisements and hinder the advertisers' ability to target Hispanics of different origins. Increases in price, reductions in the number of available advertisements, and diminished program diversity all force advertisers to advertise less as well as less effectively. As a result, the conduct of CC and HBC directly harms advertisers.

3. Deterioration in the number and quality of advertisements ultimately results in higher prices for the advertisers' products. Typically, advertisements provide useful information to consumers (such as location, price, and product attributes), and they stimulate competition among producers

of similar products. Reductions in advertisements will adversely affect consumers in at least two ways: increased consumers' search costs due to reduced information provision and potential price increases due to reduced product competition. Thus, Defendants' anticompetitive conduct harms the consumers of advertisers' products.

4. In addition, consumers of advertisers' products who listen to Spanish-language media are harmed in yet another way. These listeners are directly affected by programming quality, particularly that involving music, which plays a significant role in the Hispanic culture. Monopolization of Spanish-language media, however, will likely deteriorate programming quality.

5. The conduct of CC and HBC also affects the viability of artists in the marketplace by reducing both the number of Spanish stations available in any given city and program diversity. Artists have fewer media choices on which to promote their music. Moreover, as fewer artists receive airtime, the number of successful artists decline, and current and would-be fans are harmed as well.

[1] CC's investment in HBC had a market value of $1.327 billion in May 2000 and of $879 million in March 2002. (Ex. 74, Tab5; Ex. 78, Tab 6.)

[2] These estimates likely underestimates the true Hispanic population. http://eire.census.gov/popest/archives/national/nation3/intfile3-1.txt.

[3] **http://www.cemus.gov/population/www/projections/natsum-T.html**

[4] **http://www.laopinion.com/corporate/images/gbuyhg-9StoQ.gif**

[5] U.S. Bureau of the Census and Selig Center for Economic Growth.

[6] U.S. Dept. of Commerce, 2000 U.S. Census, and Strategy Research *Corp.*

[7] In December 1999, Lowry Mays of CC denied to Raul Alarcon, CEO of SBS, that Randall Mays had made those statements, apparently based on his belief in his son's character rather than any investigation of those facts. (L. Mays Dep. 138-147, Tab 2.)

[8] Another aspect of the HBC plan to attack SBS was implemented by HBC in the Summer of 2001, when 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. Albertini later left SBS and, upon information and belief, has received funding from Tichenor to form a radio marketing firm.