

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C., 20554

In the Matter:)
Digital Audio Broadcasting Systems) MM Docket No. 99-325
And Their Impact on the Terrestrial)
Radio Broadcasting Service)

The following Reply is a further response to both the Comment Sought On Use of Digital AM Transmissions During Nighttime Hours DA 04-1007 Dated April 14, 2004 and also the Further Notice of Proposed Rulemaking And Notice of Inquiry Released on 4/20/04, both of which are part of MM Docket No. 99-325. The undersigned¹ filed a Reply dated July 12, 2004 and the Commission extended the Reply period to August 2, 2004. Subsequent to his July 12, 2004 Reply, he recalled a case, RKO General, Inc. v. FCC, 670 F.2d 215, cert. denied 4/19/82 & 6/14/82, because he had significant dealings with RKO Radio during the AM Stereo competition. After studying said decision he has concluded that this case should not only be brought to the attention of the Commission, but it is the **CONTROLLING** case that requires the Commission to Deny iBiquity Digital Corp. any further grants that will permit use of its equipment by AM Broadcasting Stations and that it requires the Commission to promptly terminate these 11 year old Proceedings.

¹The undersigned, L.R. Kahn, footnoted his engineering qualifications in earlier submissions in this Docket. Since this document treats legal matters it may be of interest to the reader to note that he is a Patent Agent admitted to the Patent Bar in 1973. He has personally argued before Appellate Courts some six times including before the Court of Appeals for the Federal Circuit in Washington, DC and the results were in his favor almost all of the time. The last time was a split decision, the District Court was reversed re invalidity for one of his patents, but the Appeal Court affirmed the finding of non-infringement by General Motors. Since this Docket treats certain matters which the undersigned has only peripheral experience with, he has discussed his filings with three Attorneys that specialize in FCC law. Finally, in view of the importance of his analysis of the factor by which he believes that IBOC stations fail to meet FCC interference Rules, he has continued to discuss his results with not only practical engineers, but also highly skilled mathematicians, and, of course, since all of his filings are sworn he will modify his findings if he receives information that would cause him to revise his opinion, as he wishes to act in "full candor."

INTRODUCTION

The Commission has assumed authority to set standards for digital broadcasting for both the AM and FM bands. That it has such authority is unchallenged herein. (However, the wisdom of violating its avowed acceptance of the free marketplace controlling radio broadcasting, except for the enforcement of FCC Rules such as 47 CFR 73.44, is being sincerely questioned.)

It is also clear, that the Commission has a duty to follow its own rules in granting any valuable rights to any entity. Obviously, granting the Iliquity Digital Corp. a monopoly for digitalizing AM and FM Broadcasting is a valuable grant, and such a grant must satisfy the standards of "full candor" as the grant affects a major public resource, all standard radio broadcasting. The Commission has in the Record of the instant Docket No. 99-325 a significant number of measurements and mathematical studies proving that the system the FCC is now considering granting an exclusive authorization to, cannot meet the most basic of FCC Rules, the protection of licensees from increased interference. The Record contains reports ranging in evidence that the favored IBOC System violates 47 CFR 73.44 by a few 100% to the analysis of the undersigned indicating the system fails by over a half a MILLION times the permitted interference energy, (57 db). Surely, anyone with normal hearing can hear the interference problem by merely tuning within +/-30kHz of any AM IBOC station's carrier. Conversely, there is not a single measurement in the Record proving that the interference from IBOC Stations is not increased in violation of FCC Rules. Indeed, recently firms that have an equity position in the IBOC System, have argued, because interference is increased, skywave coverage of AM Radio, which is so

important to millions of Americans, must be sacrificed so that their significant investments pay off, no matter what is in the Public Interest.

Accordingly as it will be detailed below, the Commission is required by RKO General, Inc. v. FCC, 670 F.2d 215 to deny any grant of any rights to iBiquity Digital Corp. ("iBC") and these Proceedings should (must) be promptly terminated.

POINT 1

Brief Review of the Facts

It must be conceded that the iBC did inform the FCC that its signal complied with the "mask" as defined by 47 CFR 73.44. Furthermore, since the senior executive of iBC is not a broadcast engineer, he should not be faulted for failing to recognize that the "mask" was developed to conform with the long term statistics of voice and music for an analog system,² and that using this "mask" for a digital signal makes no sense.

Accordingly, up until the time the first iBC station went on the air no one, at least those in the highest echelons of iBC, can be criticized for "lack of candor." However, once the stations started to transmit the iBC Signal, ANYONE, no matter what their background, assuming they had normal hearing, should have immediately recognized that the noise level had been drastically increased.

With this concise statement of facts we can now consider the controlling LAW:

²In a number of Kahn Communications, Inc. ("KCI") laboratory tests, using a variety of types of music interspersed with voice announcements, we have noticed that if you set an AM test transmitter to almost full legal modulation, (the way a well run [aggressive] station would), -96% and +123%, you can play hours of music, with a spectrum analyzer set for peak storage, and the display will very closely follow the "mask" over +/-10kHz from the carrier frequency. However, if you look at short periods of time, a few seconds, the peaks will be very low and the spectrum isn't filled in. Conversely, if you view a station using the iBC System, the display is filled in all of the time. That is why the interference is so enormous.

RKO General, Inc. v. FCC, 670 F.2d 215 , Teaches FCC Grantees Must Exercise "Candor"

The Court Mandated the FCC to, in cases where a grantee did not act in "full candor," impose the severest punishment it can impose on a licensee, the loss of all of its licenses, the civil equivalent of the death penalty. That "candor" requirement not only covered affirmatively deceptive filings,³ but also requires loss of licenses for failure to promptly bring to the FCC's attention factors that the Commission and the Public (including unknown parties that might challenge a station's license) may require to decide whether the licensee had the proper "character" to properly be entrusted to act in the best interest of the Public.

Character factors, in the case of RKO General Radio, had nothing to do with the ethics in its radio broadcasting operation, as those of us that worked with this highly ethical group can attest to, it had to do with General Tire's CEO engaging in questionable activities in South Africa in the 1970's, long before it bought control of RKO Broadcasting.

In the present Proceedings, the alleged "lack of candor" goes to the heart of iBC's operation, and in my opinion, that has continued ever since stations initiated iBC broadcasts.

POINT 2: THE WHOLE TRUTH AND NOTHING BUT THE WHOLE TRUTH

Brief Review of the Facts:

KCI made an "on-line" search attempting to determine the ownership of iBC, as

³From his brief study of the Record, the undersigned wishes to point out that he has not found a single submission sworn or affirmed, nor any affidavits, except for all of his own sworn submissions. But, whether or not the statements of iBC and its supporters are sworn has nothing to do with iBC's "candor" as RKO General demands that affirmative statements be placed in the Record and their absence, (silence), obviously cannot be sworn. Of course, swearing to a false statement puts individuals at risk of felony convictions, but it has no impact on this Docket.

such information is important to any entity, including the undersigned, wishing to challenge the FCC monopoly grants to iBC, possibly on character grounds, and whether, or not, iBC is qualified to protect the interests of the Public. The search was a failure. Clearly, secretive, "faceless," corporations have no known characteristics, except as to their size and power. But getting a better feel of iBC's assumed Plan to "grow" its firm was really interesting. First of all, iBC has disclosed that ALL of the really big broadcast groups...Clear Channel, Viacom, ABC, Bonneville, etc., own equity in iBC. Most of these firms are not only healthy, wealthy but, (knowing some of their engineers), they are also wise. So how come, they made substantial cash investments in a firm with an unproven product?

On information and belief, it comes down to an assumed Plan, which I believe iBC used, was really ingenious. Also on information and belief, the Plan was, I believe, carried in more than one occasion, would work as follows: Approach the CEO of large, and some small key, broadcast groups and tell him about the huge (TRILLION? dollar) target...replacement of almost a BILLION radios owned by the Public. But the assumed "Plan" required the CEO to keep the technology secret, especially from his engineers who might copy it and end up competing with iBC. That is the way I believe unproven technology was sold, keeping engineers, the people who had the training to discover flaws in technology, out of the loop. With all the heavy hitters in Radio Broadcasting lined up, the next step would be far easier, lining-up some of the world's most powerful financial houses, (JP Morgan, Chase, Deutsche Bank, J&W Seligman, Pictet-Swiss, Riggs, Whitney, and most importantly, Lucent New Ventures. And of course, all the big broadcast

equipment manufacturers were easy to convince to be part of any plan that can get them sales, and this is also true of receiver manufacturers. The assumed deal was done.

All this was accomplished without a single impartial analysis of the iBC System and without a single critical on-the-air test, day or night! Brilliant plan, and if that is how it was done, it was superbly executed.

BUT now the Public and FCC must know the details: How much each investor put in and what class of stock they bought..AND, most importantly, who really CONTROLS iBC and determines its character.. Could it be Lucent, since its Bell Labs did much of the engineering? Why am I so interested in Lucent? Because, even if iBC hadn't misled the FCC re huge interference, iBC would have a problem if Lucent is in control as per RKO General, because of the recent WSJ reports.⁴

SUMMARY OF ENGINEERING AND LEGAL ARGUMENTS WHY STATIONS USING THE iBC IBOC SYSTEM MUST BE ORDERED TO CEASE USING SAID SYSTEM

Brief Review of Main Engineering Argument:

"Finch" type analysis, pages 4, 5, 6 and 7 of my 7/12/04 filing, indicating that iBC's System violates FCC interference Rules by 600,000 times, (57 db), the legal limit, is incorporated herein by reference. But, even if the iBC System failed by ONE TENTH of a db (.1db), iBC would lose its monopoly grants..AND Rule 47 CFR 73.44 cannot be changed retroactively..That's illegal..There is no way out for iBC.

The existing FCC Rules re interference must be respected by everyone,⁵ even if the FCC

⁴Wall Street Journal, Articles starting on pages listed: 4/07/04, Page A8 & 5/17/04 Page A1

⁵KCI's Cam-D™ System conforms to all FCC interference Rules. In order to make it comply with 47 CFR 73.44, we had to reduce the data level by -67db below the carrier power.. below 5 millionth the power! To maintain and, indeed increase coverage, we had to invent new technology.

wanted to be lenient it can't, because America is ruled by laws, not individuals or agencies.

To underscore the view that the IBC AM System must be outlawed, consider the basic tenant of radio broadcasting, which was the basis of the deal that was made between broadcasters and the Public, long before the FCC existed...Compatibility. The deal was, and is: We the People will spend our hard earned money to buy radios if you, the broadcasters, will provide programs we want to hear...AND the Covenant had no time limit.

On-the-other-hand, broadcasters expected that if they built stations that loyally served their listeners, they would keep broadcasting for ever..and if anyone interfered with them, they could get relief in Court, (later the FCC was given the job), because the new station was trespassing on the older station and more importantly, its listeners' rights to hear their older station's programs. It is as simple as that, and no commercial entity, no matter how powerful it is can ignore the Compatibility Covenant...it isn't only illegal, it would be political suicide. Now let us consider the law of RKO General.

The law can be briefed in two sentences: 1) The FCC must disavow valuable grants given to any entity that does not act in "full candor." and: 2) All grantees of valuable grants must fully disclose all of its owners and identify anyone that has a stake in said valuable grants, so that the FCC can determine if the grantee's "character" is proper to be entrusted to protect the Public Interest.

Respectfully submitted,



Leonard R. Kahn

Sworn and Dated 7/28/04

cc: iBiquity and Lucent

Footnote 5 Continued:

If we failed, you wouldn't have ever heard of Cam-D...AM Radio is too important to all of us.