

Reg. Prof. Engineer Leonard R. Kahn, U.S. Patent Agent
35th Floor
767 Third Avenue
New York, NY 10017

Phone (212)-983-6765

FAX (212)-983-6432

Note: the voice phone number (212-933-6765) given on the previous filing was incorrect.

Please note the correct number as given in this updated filing is (212)-983-6765.

VIA FAX & Electronic Filing

Marlene H. Dortch, Secretary of FCC

445 Twelfth St. SW

Washington, DC 20554

Ex parte Filing in MM Docket No. 99-325

April 7, 2007

Dear Ms. Dortch:

At the recent (3/22/07) FCC Hearing, the Commission announced adoption of our competitor's IBOC System as sponsored by the iBiquity Digital Corporation which as you know is a Defendant in a suit (*Kahn, et al vs. iBiquity Digital, et al*) 06 civ.1536 on appeal to the 2nd Circuit, in which Lucent, Clear Channel, Texas Instruments and the FCC are the named "*et al*" Defendants. This suit alleges violation of Sherman Antitrust Laws based upon a *per se* violation, "*boycott*" of our POWER-side™ System and our new Cam-D™ System which are both in full compliance with FCC Rules.

The purpose of the instant filing is to correct the erroneous FCC Press Release that indicates that the "iBOC" system (a term that I have used in the above cited case to identify the specific IBOC system promoted by the Defendants) is Approved. As anyone familiar with the Constitution knows, since the FCC is an agency of the Administration, it can ONLY ADMINISTER Laws passed by the Congress and not vetoed by the President. Thus, the FCC cannot write or change laws, it can only enforce them.

To be specific, under existing Law 47 CFR Section 73.44(b), emissions 20 kHz to 30 kHz from a carrier MUST be at least 35 db below a station's unmodulated carrier. So WCBS in its April filing got that right, but they "inadvertently" forgot the rest of the story as clearly stated in that same section of 47 CFR Section 73.44(a) that measurements of the spectrum must be made with a "peak hold of 10 minutes" whereas WCBS AND ALL of the other iBOC stations use only millisecond long measurements

The Petitioner recognizes the Commissioners are not skilled engineers and this rule may sound like engineering "Gobbledygook." (A term Chief Justice Roberts recently used to describe an inferior Court's erroneous argument re the patent law as discussed *In re Kahn*, which the Commissioners may believe is irrelevant, but it isn't. It provides an example of how the Patent Office, a Federal Agency,

immediately changed its regulations when its error in law was mentioned by the Supreme Court, which is suggested may apply here.)

Anyway, this argument is not engineering “Gobbledygook.” It is serious, as affirmed, by the recent complaint against WCBS and also many comments filed in this MM 99-325 Proceedings. If the Commission’s staff will check my earlier comments or on my website *wrathofkahn.ORG*, they will note that the LAW is violated by almost a sixty (60) db, a million to one violation. This figure was published about a year ago with a request (challenge) that my distinguished mathematician friends at Lucent’s Bell Labs or Defendant TI find an analytical error, or better measures a mistake, please contact me.

The point is, even a 1db error violates the Law and the FCC must enforce the law. And the Commission cannot permit licensees to use such a system to mislead the Public into buying special radio receivers that are obsolete on the day of purchase. **BUT MOST importantly, this is all happening during a national emergency, endangering lives by wrecking our system for alerting the Public of natural and manmade disasters.**

The Petitioner wishes to also point out that he is not the only PE who has measured and analyzed this iBOC defect. (Though their analysis didn’t reach his million times figure.) But the Commissioners don’t have to worry about this Gobbledygook, they can hear the problem themselves by just listening to their own radios and have any local iBOC station switch IBOC on and off while tuning to adjacent channel stations 10, 20, 30 kHz or even more away from the iBOC station’s frequency on the dial.

Clearly, I am biased having made a very sizable investment (multi-million dollar) in the development of a competitive IBOC System that actually greatly increases any station’s coverage AND meets (exceeds) all FCC specifications as measured with the legal 47 CFR Section 73.44 required tests, so therefore, we practice what we preach. That we make products that fully comply with FCC regulations is not a boast, as I cannot name a single firm that, prior to the IBOC campaign, did not fully comply with FCC Rules. Prior to the iBOC international cartel scheme to make Americans replace their car, home and any other type of over-the-air radio, a TRILLION DOLLAR plan, that convinced the fifteen largest radio groups to overrule their best engineers. NO manufacturer in the 75 year history of broadcasting would have built such an illegal product, nor would have any FCC Inspector permitted it to stay on the air.

A shocking violation of Public Interest.

This brings the Petitioner to the second complaint: The violation by the FCC of all of the many skilled broadcasters who have filed negative comments about the iBOC System of their Constitutional Right to Petition Their Government, and the violation of the Administrative Procedures Act and *RKO General vs. FCC* 670 F.2d 215 (D.C. Cir.1981).

Finally, this is not a personal attack on the present Commissioners, the IBOC system was first really launched during the last (Democratic) Administration and

as one can see from the above argument, the Commissioners cannot be criticized because they were the target of a complicated scheme to violate an arcane engineering rule.

Respectfully yours,
[Signed]

Leonard R. Kahn, PE, U.S. Patent Agent, FIEEE

cc: The CEO of Clear Channel, iBiquity Digital, Lucent Technology, Texas Instruments, U.S. Justice Department and CBS