

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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

**COMMENTS OF
CLEAR CHANNEL COMMUNICATIONS, INC.**

SUMMARY

Digital radio broadcasting has the potential to radically transform the traditional world of terrestrial radio broadcasting. To date, much of this growth has occurred organically. Clear Channel urges the Federal Communications Commission to consider the critical role its regulatory “light touch” approach has played in the development and roll-out of Digital Radio Broadcasting (“DRB”). We urge the Commission to maintain this approach to ensure that U.S. broadcasters are able to make the transition to DRB in manner that provides them with maximum flexibility, thus encouraging continued investment and innovation in DRB technology and services.

To that end, Clear Channel strongly cautions against the Commission’s proposal to apply arbitrary caps on the amount of DRB subscription services that a radio broadcaster may offer. Such a limitation on the flexible use of this new technology would impede innovation and potentially foreclose experimentation.

Nor should the Commission impose fees on subscription-based DRB services. In fact, absent an explicit grant of authority by Congress comparable to that which authorizes the collection of a fee on certain ancillary or supplementary digital *television* services, the Commission lacks sufficient authority to impose such fees.

Clear Channel takes its public service obligations very seriously and understands the Commission’s desire to harmonize the traditional public service obligations required of analog radio stations with the new DRB format. However, the Commission should not take advantage of radio broadcasters’ transition to DRB to impose burdensome new regulations, such as enhanced disclosure requirements, that are not germane to DRB technology or services. Moreover, Clear Channel sees no reason why the Commission should impose new public service obligations on DRB services when it has refrained from applying such obligations on either television broadcasters during their transition to DTV or Satellite Radio providers implementing Digital Audio Radio services.

Although Clear Channel believes that many of the public service obligations imposed on free, over-the-air DRB services by the Commission need not be imposed on non-audio DRB services, we do support requiring any audio-based DRB subscription service to comply with the Commission’s existing Emergency Alert System (“EAS”) requirements, EAS being a critical component of our nation’s emergency response infrastructure.

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COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Clear Channel Communications, Inc. (“Clear Channel”) hereby submits its comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Second Further Notice of Proposed Rulemaking* in the above captioned proceeding.¹

I. INTRODUCTION AND STATEMENT OF INTEREST

Clear Channel owns 1,038 local radio stations throughout the United States². Clear Channel has a significant interest in the subject proceeding, in which the Commission seeks to develop a vibrant terrestrial digital radio broadcast (“DRB”) service and establish rules for the implementation of in-band, on-channel (“IBOC”) technology.³ Indeed, Clear Channel has been a

¹ *In the Matter of Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344 (2007) (“*Second Report & Order*” or “*Second FNPRM*,” as appropriate).

² Clear Channel is currently engaged in selling 448 of its currently owned radio stations. Upon completion of the sale of these stations, Clear Channel would own approximately 5% of the radio stations in the United States. *See*, Press Release, *Clear Channel Communications, Clear Channel Announces Plan to sell Radio Stations Outside the Top 100 Markets and Entire Television Station Group* (November 16, 2006), at: <http://www.clearchannel.com/Corporate/PressRelease.aspx?PressReleaseID=1825>.

³ In these comments, the terms “Digital Radio Broadcasting” and “Digital Radio Services” refer broadly to the audio and non-audio digital services broadcast by terrestrial radio stations (including multicasts, datacasts and text services), all of which are supported by the IBOC technology. “Digital Audio Broadcasting” refers specifically and exclusively to audio services. Where quoting the prior statements of the Commission in which the term “DAB” or “Digital Audio Broadcasting” is used, we retain that term but note that, unless otherwise indicated, that term refers to what Clear Channel now calls “Digital Radio Broadcasting” or “Digital Radio Services.”

leader in the development and roll-out of digital audio services, having long recognized the important benefits offered by DRB (and IBOC, in particular) technology, including better sound quality, better reception, and the ability to provide new data services. Currently, 426 Clear Channel stations have converted to digital and are offering a simulcast of their analog broadcast,⁴ and 327 of those are also running an HD2 multicast channel, many of which bring entirely new music or spoken-word programming to local listeners, as well as to underserved populations.⁵ Currently, the company plans to convert an additional 44 stations to digital operations by the end of 2007, and will add to that number as the transition to DRB progresses.

II. THE TRANSITION TO DRB SHOULD CONTINUE TO BE MARKET-DRIVEN

Before addressing the specific matters upon which the Commission seeks comment in the *Second FNPRM*, it is important to underscore the importance of ensuring that the DRB transition is allowed to proceed unencumbered by unnecessary regulation. This is decidedly *unlike* the approach taken with the transition to digital *television*, which – for reasons articulated well by the Commission in the *Second FNPRM* – has involved multiple statutory and regulatory mandates, both on broadcasters (the February 17, 2009 “hard deadline”) and receiver manufacturers (the DTV tuner mandate, which culminated with a March 1, 2007 deadline for

⁴ See, *Second Report and Order* at ¶8; see also, *Second Report and Order* at 58 (amending Part 73.403 of the Commission’s rules) (“Broadcast radio stations using IBOC must transmit at least one over-the-air digital audio programming stream at no direct charge to listeners. In addition, a broadcast radio station must simulcast its analog audio programming on one of its digital audio programming streams” (emphasis added)).

⁵ As Clear Channel has noted in the Commission’s media ownership proceeding, the multicast programming offered by Clear Channel’s HD2 channels includes new and/or unsigned artists, in-depth local news, comedy formats, and targets underserved populations. For example, on one of its Chicago HD2 channels, Clear Channel has premiered “Pride Radio,” which airs music, entertainment, and spoken word content of specific interest to the gay community. In addition, Clear Channel is in the process of developing additional content for its HD2 channels, including programming focusing on business, Christian interests, and a new talk format targeted specifically at issues affecting women. As discussed therein and *infra*, many of these new HD2 formats are the result of the efforts of Clear Channel’s recently-launched “Format Lab.” See *In the Matter of 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of Clear Channel (October 23, 2006) at 30-31.

inclusion of DTV reception capability in all TV receivers). In sharp contrast, the transition to digital radio broadcasting has been – and is being – driven, successfully, by *market forces*.

Indeed, despite the lack of any federal mandate to do so, the number of radio broadcasters entering into agreements to use IBOC technology to provide DRB services grew by 70 percent – to 900 stations – in the 16 months between April 2004⁶ and August 2005.⁷ Moreover, as the Commission notes in the *Second Report and Order*, twenty-one of the nation’s top radio broadcast groups have committed, voluntarily, to accelerating the conversion of 2,000 AM and FM stations to IBOC technology.⁸ Moreover, as also noted, ten of the nation’s leading radio groups (including Clear Channel) also have joined to form the “HD Digital Radio Alliance,” a joint initiative to promote consumer adoption of HD radio, including through coordination of multicast formats, securing digital automotive receiver designs, and lowering the price points for digital radio receivers.⁹ In short, radio broadcasters’ commitment to a successful and ubiquitous DRB transition is real and it is resulting, with only minimal and appropriate regulatory involvement, in the deployment of DRB services quickly, ubiquitously and in a manner that serves the public interest. The Commission notes in its *Second Report and Order*:

[T]here is no evidence in the record that marketplace forces cannot propel the DAB conversion format, and effective markets tend to provide better solutions than regulatory schemes.¹⁰

The Commission is absolutely correct: an effective marketplace will provide better solutions, both for broadcasters and, ultimately, the American listening public. Indeed, the threat

⁶ *In the Matter of Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, Further Notice of Proposed Rulemaking and Notice of Inquiry*, 19 FCC Rcd 7505, 7510 (2004) (“2004 NPRM”).

⁷ See *Second Report & Order* at 11.

⁸ See *Id.*

⁹ *Id.* See also discussion in Section IV, *infra*.

¹⁰ *Second Report and Order* at 15.

of an over-regulatory regime for the (costly) transition to such a new technology could chill broadcasters' investment in DRB, both with respect to its implementation and promotion. That would be a mistake. We urge the Commission to continue to apply the pro-market view it so well articulates in the *Second Report and Order* to ensure that DRB programming and services become available to all Americans in as rapid and robust manner as possible.

III. THE COMMISSION LACKS STATUTORY AUTHORITY AND JUSTIFICATION FOR IMPOSING SPECTRUM FEES ON DRB BROADCASTERS' SUBSCRIPTION SERVICES

As the Commission itself points out in the *Second FNPRM*, there is no express statutory authority to impose spectrum fees in the DRB context comparable to the provision that authorized the collection of a fee on certain ancillary or supplementary services provided by DTV broadcasters.¹¹ Unlike the explicit congressional grant of authority to the Commission to impose fees on DTV broadcasters for the provision of ancillary or supplementary services found at 47 U.S.C. 336(e), there is no analogous statutory authority from Congress delegating to the Commission the authority to collect fees on DRB subscription services. As the Commission is well aware, Section 336(e) limits the Commission to collect fees only on those ancillary or supplementary services authorized under a specific provision of law – 47 U.S.C. 336(a) – which deals exclusively with advanced *television* services.¹² Absent a similar, specific grant of Congressional authority, the Commission lacks the legal basis for imposing any fees on subscription-based services or any ancillary or supplementary services that DRB stations may provide. Therefore, since it is “axiomatic that administrative agencies may issue regulations

¹¹ See *Second FNPRM* at 114.

¹² 47 U.S.C. 336(a)(2) (“[the Commission] shall adopt regulations that allow the holders of such [advanced television] licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.”)

only pursuant to authority delegated them by Congress”¹³ the Commission should refrain from imposing fees on any potential subscription-based DRB services that broadcasters may choose to offer.

Moreover, the Commission cannot justify imposition of spectrum fees under the theory of its ancillary jurisdiction. In order for the Commission to regulate DRB under its ancillary jurisdiction, two conditions must be met. First, the subject of the regulation must be covered by the Commission’s general grant of jurisdiction under Title I of the Communications Act of 1934.¹⁴ Second, the subject of the regulation must be “reasonably ancillary to the effective performance of the Commission’s various responsibilities.”¹⁵ There is no general grant of authority under Title I of the Act to impose spectrum fees. Where spectrum fees have been imposed, it is always pursuant to specific grant of statutory authority, as was the case with digital television. Moreover, even if the Commission were to attempt to claim inherent authority under Title I, it would be hard pressed to justify how spectrum fees imposed on radio broadcasters would be reasonably ancillary to the effective performance of the Commission’s various responsibilities, as the Supreme Court required in *United State v. Southwestern Cable*.¹⁶ In that case, the most expansive decision upholding the Commission’s exercise of ancillary jurisdiction, the Supreme Court refused to allow the Commission to use its ancillary jurisdiction to “achieve plenary authority over ‘any and all enterprises which happen to be connected with one of the

¹³ *American Library Assoc. v. Federal Communications Commission*, 406 F.3d 689, 691 (D.C. Cir. 2005).

¹⁴ 47 U.S.C. § 151 et. seq. (2001) (“Communications Act”).

¹⁵ *American Library Association*, at 692-693.

¹⁶ *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968).

many aspects of communications.”¹⁷ The Commission has previously determined that it may only rely on its ancillary authority when doing so is “reasonably required to perform an express statutory obligation.”¹⁸ Here, there is no express statutory obligation requiring the imposition of spectrum fees. The Commission is not at liberty to impose spectrum fees in this context absent specific congressional authorization.

IV. ANY PROGRAMMING AND OPERATIONAL RULES FOR DRB SUBSCRIPTION SERVICES SHOULD BE MINIMAL AND FLEXIBLE

Although Clear Channel has not determined the extent to which it will offer subscription-based DRB services, we believe firmly that any such decision – by any broadcaster – must be driven, to the greatest extent possible, by market forces, not by regulatory requirements or limitations. This is especially important to encourage continued and increasing investment in DRB by all broadcasters.

It is critical to note that, at this early stage in the deployment of DRB services, broadcasters offering these services are not realizing any revenue, much less profit. They are, however, incurring massive costs. Indeed, Clear Channel’s own capital expenses to convert its stations to DRB already have reached tens of millions of dollars, and will continue steadily upward as additional stations are converted.

Moreover, Clear Channel is investing heavily in other areas that are critical to consumer adoption of DRB, including extensive promotional and programming activities. For example, as a founding member of the HD Digital Radio Alliance, Clear Channel has committed substantial

¹⁷ *Id.* at 164 (quoting *CATV and TV Repeater Services*, 26 FCC 403, 429). *See also FCC v. Midwest Video*, 440 U.S. 689, 706 (1979) (stating that “[t]hrough afforded wide latitude in its supervision over communications by wire, the Commission was not delegated unrestrained authority”).

¹⁸ *In re Implementation of section 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, WT Docket No. 96-198, *Report and Order and Further Notice of Inquiry*, 16 FCC Rcd 6417, 6456 ¶ 95 (1999) (emphasis added).

sums to the Alliance's marketing efforts that promote HD Radio to consumers. In fact, the HD Digital Radio Alliance recently renewed its charter and committed an additional \$230 million in marketing funds for 2008, bringing the group's total financial commitment to \$680 million.¹⁹

In addition, Clear Channel has invested millions in the launch of Format Lab, a creative community comprised of two-hundred programmers and production professionals tasked with developing fresh and unconventional audio content for HD radio. All programming generated by Clear Channel's Format Lab is made available to rival broadcasters, who can use the programming as-is or can choose to supplement the elements – which include continually refreshed playlists, imaging and spoken-word vignettes – with their own locally customized content to create fully localized radio channels. To date, Format Lab has developed 83 channels available for broadcast.

The enormous sums that have been (and continue to be) invested by radio broadcasters in DRB are largely responsive to the Commission's decision to allow DRB technology to be developed and implemented on as great a market-driven basis as possible. Clear Channel urges that the Commission not retreat from this path with regard to its regulation of subscription-based DRB services. Indeed, any such rules adopted by the Commission should be minimal, limited notably to those that ensure public safety, so as to provide broadcasters of this nascent technology maximum flexibility with which to experiment and realize some revenue to offset the massive costs of launching DRB services.

¹⁹ See *HD Alliance Ups Marketing Commitment by \$230 Million*, RADIO INK, Oct. 15, 2007, at: <http://www.radioink.com/HeadlineEntry.asp?hid=139605&pt=todaysnews>.

A. The Commission Should Not Impose Arbitrary Limits on Digital Audio Broadcasters' Subscription-Based Offerings

The Commission seeks comment on “how to ensure that the amount of subscription-based radio services is limited,” and specifically whether to limit a digital audio broadcaster from devoting more than 20 to 25 percent of its digital capacity to subscription services.²⁰

The Commission, in its *Second Report and Order*, already requires all broadcast radio stations utilizing IBOC to transmit at least one free, over-the-air channel, as well as provide a simulcast of its analog station over one of its DAB streams.²¹ In practice, the one free, over-the-air stream is a simulcast of a radio station’s analog content but many stations also provide a second or third free DAB programming service to the public. Consistent with the need to maintain the largely market-based approach that has so clearly and effectively driven the development and implementation of DRB thus far, and given the importance of providing broadcasters with maximum flexibility to experiment with (and perhaps, at some point, realize some revenue from) DRB services of various types, Clear Channel believes it would be best for the Commission to refrain from imposing arbitrary limitations on the capacity broadcasters may devote to subscription-based DRB services.

In fact, imposition of such a cap would be a classic “solution in search of a problem.” One of the primary hurdles that digital audio broadcasters must overcome is the relatively high price to consumers of DRB receiver equipment.²² As with so many new consumer electronics devices, prices decline as a device reaches “mass market” sales levels. Broadcasters are keenly

²⁰ See *Id.* at 113.

²¹ See 47 C.F.R. § 73.403(a), added by the Second Report and Order in this docket.

²² Currently, the price of an HD radio ranges from approximately \$180 to nearly \$1,000. See *The State of The News Media 2007: An Annual Report on American Journalism*, at: http://www.stateofthenewsmedia.com/2007/narrative_radio_economics.asp?cat=3&media=9

aware that a consumer's ability to receive multiple streams of *free, over-the-air, crystal clear* audio programming is one of the biggest selling points that is driving HD radio sales, and will continue to be for some time. While some broadcasters may opt to offer, in addition to their free digital channel/analog simulcast, some form of subscription-based service(s), in all likelihood – at least for the foreseeable future – such offerings will be the exception and not the rule. To the extent subscription-based services can serve to drive innovations in digital audio broadcasting (for example, advances in compression or other efficiencies), these services could provide an important proving ground for features and/or improvements of broad applicability. Accordingly, Clear Channel recommends that the Commission permit digital audio broadcasters to utilize their remaining capacity in a manner that is responsive to market demand and consistent with the public interest.

B. The Commission Should Not Impose Additional Public Interest Requirements On DRB Broadcasters' Free or Subscription-Based Services

The Commission seeks comment on whether to apply to digital radio broadcasters' subscription services the same regulatory requirements it has determined will apply to free, over-the-air programming streams.²³ Clear Channel believes such an approach would be unnecessarily over-regulatory.

The Commission already has determined that it will apply several of the statutory and regulatory requirements applicable to analog radio broadcasting to all free, over-the-air digital programming streams.²⁴ Station identification requirements will apply to free, over-the-air

²³ See *Second FNPRM* at 115.

²⁴ These include: political broadcasting, payment disclosure, prohibited contest practices, sponsorship identification, cigarette advertising and broadcast of taped or recorded material. See *Second Report and Order* at 60-86 (Section D.1).

digital programming streams,²⁵ as well as – appropriately and importantly – Emergency Alert System (“EAS”) requirements.²⁶ Thus, with regard to all free, over-the-air audio streams, radio broadcasters face effectively the same core requirements and obligations in the digital realm as they do in the analog.

Clear Channel takes each of these requirements, especially its public service obligations, very seriously, and does not take issue with the Commission’s attempt to harmonize these traditional public service obligations with respect to a station’s main analog and digital simulcast programming stream. However, the Commission should not utilize broadcasters’ voluntary transition to DRB as justification for the imposition of new public interest responsibilities on digital radio broadcasters that are not reasonably germane to DRB technology.

For example, Clear Channel sees no connection between the transition to DRB and the Commission’s proposal to require *all radio stations’* public inspection files to be placed on the Internet.²⁷ To be clear, every Clear Channel station welcomes the opportunity to share with the local community it serves information about its public interest and other programming, and citizens are readily able to avail themselves of the opportunity to review this material. However, to require that all of that information – which is substantial – be converted to digital format and uploaded to the Internet would be neither reasonable nor necessary. In fact, there is already

²⁵ *Id.* at 66. As discussed previously by Clear Channel in this proceeding, the advanced technology of DRB removes the core function of station identification, which is to permit the identification of interferers when instances of harmful interference occur. As the Commission is aware, with DRB, harmful interference will result in a complete loss of the affected station’s digital signal making it impossible for the receiver in the interference area to decode and identify the audio of the interfering signal. For this reason, Clear Channel encourage the Commission to recognize DRB subscription services as an excellent opportunity to experiment with this new SIS technology in order to determine if can be a sufficient replacement for traditional aural station identification. Doing so would only encourage market forces to work at improving SIS technology. For example, as broadcasters may want to “brand” its digital signal, DRB receiver companies will be forced to come up with new and better ways to display the digital signal.

²⁶ *Id.*

²⁷ *See Second FNPRM* at 117.

ample evidence in the record of the Commission’s Enhanced Disclosure proceeding that such a requirement would constitute an undue burden on broadcasters, in terms of dedication of both human and financial resources, in light of “...the substantial size of public files; the lengthy and expensive process of converting so much paper to electronic format;...the costs of creating, maintaining and hosting new websites for stations that currently do not have them; and the costs of upgrading the existing websites and services of stations to store and provide access to huge volumes of data.”²⁸ While these concerns were raised in the context of a requirement on television stations, they apply with equal, if not greater, force to radio stations, where revenue growth is (and is predicted to remain) relatively flat, especially when compared to revenue growth in other media.²⁹

Any imposition of new public service obligations also would diverge from the Commission’s past decisions to refrain from strangling new technology with additional and burdensome regulations. For example, when the Commission established Rules and Proceedings for Satellite Digital Audio Radio (“DARS”) licensees, it only adopted two of the many public interest requirements the Commission imposes on traditional terrestrial broadcasters on these new service providers³⁰ and specifically declined to adopt any new or additional public service

²⁸ See *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations* (MM Docket No. 00-168), Reply Comments of the National Association of Broadcasters (Feb. 16, 2001) at 14, n.38 (further citing the Comments of Benedek Broadcasting Corporation, *et. al.* at 2-4; Viacom Inc. at 24-27; National Broadcasting Company, Inc. at 14-15; The Walt Disney Company at 15-10; Sinclair Broadcast Group, Inc. at 6-7; and State Broadcasters Association at 19-22).

²⁹ *BIA Financial Network Reports That Radio Industry Commitment To HD Radio™ And Other Revenue Generating Activities Hold Promise*, BIA FINANCIAL NETWORK (September 26, 2007), at: <http://www.bia.com/pressitem1.asp?id=1111> (“Total radio revenue growth for 2007 should remain flat or increase one percent for the entire industry, with an expected one-two percent pickup for 2008, according to BIA. This slight pickup will be better than the most recent years, though still lagging behind the growth in several other media.”)

³⁰ *In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754, 5792 (In that order the Commission only applied 47 U.S.C. 315 and 47 U.S.C. 312(a)(7), the “Federal Candidate Access Provision” and the “Equal Opportunities Provision” respectively, to DARS service.).

requirement for this service.³¹ Similarly, the Commission has yet to apply any additional public interest obligations on television broadcasters in their transition to DTV.³² The Commission has taken the appropriate and correct approach by refraining from adopting any new “public interest” requirements as part of its *Second Report in Order* in this proceeding³³ and should apply this decision to any proposed requirements for DRB subscription services. Given that DRB is still in the early stages of implementation and that there remain numerous uncertainties as to what types of DRB services ultimately will be provided by each broadcaster, it would be premature and harmful to a successful transition to DBS for the Commission to establish additional public interest obligations on free or subscription-based DRB services.

Clear Channel does, however, support requiring any audio-based DRB subscription services to comply with the Commission’s existing EAS requirements. As the Commission previously noted in its *2004 FNPRM*, the purpose of the EAS rules is “to fully inform the public of major emergencies,” and “this mandate can only be fulfilled if it is broadly applied.”³⁴

Consistent with Clear Channel’s comments responsive to that FNPRM, although the potential costs for converting EAS decoders to accommodate IBOC technology could be fairly expensive, we believe that the EAS system is too critical to require anything less than its full application to all digital audio services,³⁵ including those provided on a subscription basis. That said, Clear Channel continues to urge the Commission to allow DRB stations to experiment with this

³¹ *Id.* at ¶ 93 (“While we are not adopting additional public interest programming obligations at this time, we reserve the right to do so.”).

³² *Notice of Proposed Rule Making* in MB Docket No. 03-15, RM 9832, and MM Docket Nos. 99-360, 00-167 and 00-168, FCC 03-8 (Rel. Jan. 27, 2003) at 112 (“To date, the Commission has not issued any decision in the DTV Public Interest Form NPRM ...”)

³³ *See* Second FNPRM at 67.

³⁴ *2004 NPRM* at 37.

³⁵ Comments of Clear Channel in MM Docket No. 99-325 (June 16, 2004).

nascent technology in order to determine if it is possible for the EAS alert tone to be embedded into the IBOC bitstream itself, thus allowing local and national EAS alerts to be activated automatically and obviating the need for encoders.

C. There Is No Need For the Commission To Change Its “Light Touch” Regulatory Approach With Regard To The Use of Technologies Enabling Automated Operation of Radio Stations

The Commission seeks comment on whether it is necessary to review the rules that have facilitated the development of automated broadcast operations.³⁶ While Clear Channel utilizes automation for only a miniscule amount of its radio station operations, this is another area in which a “light touch” regulatory approach by the Commission has yielded important technological innovations and increased operational efficiencies for radio stations. Moreover, as the Commission notes, the EAS system is specifically designed for unattended operations,³⁷ and any Clear Channel station that is temporarily operating in automatic mode is fully set up to ensure that programming is interrupted immediately upon the receipt of an EAS alert.

Clear Channel is committed to working with the Commission (as well as law enforcement and public safety entities) to ensure effective EAS implementation by digital audio broadcast services.

³⁶ See *Second FNPRM* at 119.

³⁷ See *Id.* at 118.

V. **CONCLUSION**

Digital radio broadcasting offers exciting opportunities for both broadcasters and our listeners. We urge the Commission to continue to rely to the greatest extent possible on marketplace forces in addressing operational matters, including by refraining from imposing arbitrary limits on the amount of capacity digital audio broadcasters may devote to subscription-based services, and by not burdening this nascent technology with a new slew of regulatory requirements. Clear Channel further believes that the Commission lacks sufficient authority, absent an express grant of authority from Congress, to impose fees on digital audio broadcasters' subscription services.

Respectfully submitted,

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