

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

In the Matter of )  
 )  
Digital Audio Broadcasting Systems ) MM Docket 99-325  
And their Impact on the Terrestrial )  
Radio Broadcast Service )

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

Andrew W. Levin  
Executive Vice President, Chief Legal Officer,  
and Secretary  
Clear Channel Communications, Inc.  
200 East Basse Road  
San Antonio, Texas 75209  
(210) 822-2828

November 14, 2007

## SUMMARY

The transition to digital radio (“DRB”) has the potential to transform how the American public listens to free, over-the-air broadcast radio. However, this transformation is still in its infancy. In order for the growth potential of this new service to be fully realized, the Federal Communications Commission (“Commission”) should heed the admonition of the overwhelming majority of commenters who urge that the Commission’s regulatory approach be characterized by a “light touch.”

The Commission should recognize that the stakeholders most responsible for this transition – from broadcasters, to the developer of the IBOC system, to a major software company – share the view that any regulation imposed on this nascent industry by the Commission should be minimal and flexible. To do otherwise, such as imposing arbitrary caps on the amount of subscription services a DRB broadcaster can offer, would only serve to stifle innovation and impede the development of DRB services.

In addition, Clear Channel reiterates a point made in its initial comments and echoed by a majority of the other commenters, that absent an explicit directive from Congress, the Commission lacks authority to impose spectrum fees on any ancillary or subscription services offered to consumers by DRB broadcasters. Moreover, the Commission should avoid following the flawed analysis of the lone commenter which attempted to justify potential Commission action through a misguided reliance on the Commission’s ancillary jurisdiction in direct contravention to established boundaries of Commission authority set by the Supreme Court.

Finally, Clear Channel continues to urge the Commission to refrain from using broadcasters’ voluntary transition to DRB as a basis for imposing additional obligations on broadcasters that are not germane to the transition. Specifically, Clear Channel joins numerous other commenters who articulated significant public policy reasons, including potential conflicts with relevant state privacy and identity theft laws, for not imposing a new requirement on all broadcasters to post their public inspection files on the Internet. Additionally, Clear Channel highlights various public policy arguments, as well as the serious constitutional concerns, associated with the possible creation of a standardized form for stations to use in their public reporting requirements. Lastly, Clear Channel points out how station automation resulting from technological advances actually has freed up resources to enhance news and information services. The DRB transition should not occasion revisitation of the automation rules.

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	THERE IS CONSENSUS THAT RULES GOVERNING DRB SUBSCRIPTION SERVICES SHOULD BE MINIMAL AND FLEXIBLE SO AS TO PROMOTE INNOVATION .....	2
III.	THE RECORD IS CLEAR: THE COMMISSION MAY NOT IMPOSE DRB SPECTRUM FEES ABSENT AN EXPRESS GRANT OF CONGRESSIONAL AUTHORITY; MOREOVER, SUCH FEES WOULD HARM THE TRANSITION TO DIGITAL RADIO .....	6
IV.	NOW IS NOT THE TIME FOR NEW PUBLIC INTEREST REQUIREMENTS ON EITHER DRB OR ANALOG BROADCASTERS .....	10
V.	CONCLUSION.....	14

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

In the Matter of	)	
	)	
Digital Audio Broadcasting Systems	)	MM Docket 99-325
And their Impact on the Terrestrial	)	
Radio Broadcast Service	)	

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

**I. INTRODUCTION**

Clear Channel Communications, Inc. (“Clear Channel”) hereby respectfully replies to comments filed in response to the Commission’s Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

The record of this proceeding supports overwhelmingly Clear Channel’s strongly-held view that, to the greatest extent possible, the transition to digital radio broadcasting (“DRB”)<sup>2</sup> should be market-driven, and that, to the extent the Commission imposes any regulations on this

---

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

<sup>2</sup> 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.”

nascent technology, it do so only with a very light touch so as to promote and not inhibit the introduction of new digital services and choices to American consumers.

Specifically, the DRB stakeholders most responsible for the success of these new digital services – including commercial and public broadcasters, the developer of the IBOC system and a major software innovator – agree that: (1) the Commission should refrain from imposing burdensome regulations and operating restrictions on subscription-based DRB services, including caps on the amount of such services that may be offered by digital broadcasters; (2) the imposition of fees on digital radio broadcasters’ subscription-based services falls outside the scope of the Commission’s current authority and would thwart the Commission’s goal of promoting investment in and innovation of DRB-based technologies and services; and (3) the imposition of new public service obligations on DRB technologies is unnecessary and, in any event, entirely premature.

By contrast, the restrictive and heavy-handed regulatory regime advanced by the “Public Interest Coalition” (“PIC”) – even if adopted only in part – would be an enormous step *backward* for what so far has been a remarkably successful, industry-wide introduction of a new digital technology. The Commission should reject such a highly intrusive regime and continue on the market-driven path that has served the transition so well to date.

**II. THERE IS CONSENSUS THAT RULES GOVERNING DRB SUBSCRIPTION SERVICES SHOULD BE MINIMAL AND FLEXIBLE SO AS TO PROMOTE INNOVATION**

The need for the Commission to take a conservative approach to its regulation of subscription-based DRB services is well established in the record of this proceeding. The National Association of Broadcasters (“NAB”) articulates this point clearly, stating:

Any combination of additional regulation or fee structures based on a marketplace that may or may not develop as expected could easily affect the market's development and stifle innovation in unforeseen ways. By allowing new products and services to be developed, and to succeed or fail based on how well they serve consumers' needs and interests, the Commission will be better able in the future to craft rules with a closer "fit" to actual marketplace conditions.<sup>3</sup>

The nascent nature of DRB services and the importance of driving further investment in DRB make this cautionary note applicable with regard to all types of DRB services, including those provided on a subscription or conditional access basis. The Commission, to date, has heeded this call to refrain from unnecessary regulation, and there is no reason to change course now.

The Commission should be particularly wary of imposing arbitrary caps on the amount of spectrum that a broadcaster may devote to subscription-based services. As a threshold matter, the principal rationale offered by proponents of such caps<sup>4</sup> — to ensure the availability of free DRB services — no longer exists. Indeed, PIC's contention that subscription-based DRB services could overwhelm free, over-the-air services completely ignores the fact that the baseline requirement on broadcasters to simulcast their analog transmission on at least one of their DRB stations will prevent any such dire scenario from playing out.<sup>5</sup>

---

<sup>3</sup> NAB Comments at 5.

<sup>4</sup> See Comments of the Benton Foundation, Campaign Legal Center, Center for Governmental Studies, Common Cause, New America Foundation, Office of Communication of the United Church of Christ, Inc., and Prometheus Radio Project ("PIC Comments") at 4.

<sup>5</sup> See Digital Audio Broadcasting Systems, 72 Fed. Reg. at 45, 692.

In fact, a cap on subscription services could — however unintentionally — discourage the very investment and innovation needed to support free services. Microsoft Corporation (“Microsoft”) makes this point very well:

[T]he best way...to ensure that licensees will continue to provide a free, over-the-air [main digital program stream] offering is for the Commission to maintain its existing light regulatory touch for [main programming services] and refrain from regulating subscription datacasting service and other alternative DRB services.<sup>6</sup>

Additionally, the Commission’s inquiry regarding whether to cap subscription services at “no more than 20 to 25 percent of a station’s digital capacity” may rely on inappropriate criteria. Specifically, as National Public Radio (“NPR”) and Microsoft correctly point out, the Commission’s reliance on current FM SCA usage as a baseline would be a mistake, since analog FM SCA usage has no bearing on the amount of digital capacity a DRB broadcaster can devote to either subscription or free services.<sup>7</sup> Given that fact, as DRB technology increases bandwidth capacity, any cap could become quickly outdated.<sup>8</sup>

Additionally, the Commission should encourage developments by stakeholders in the industry that comport with the Commission’s long stated goal of more efficient utilization of spectrum. As the Commission noted in its 1999 *Spectrum Policy Statement*, “[w]ith increased demand for a finite supply of spectrum, the Commission’s spectrum management activities must focus on allowing spectrum markets to become more efficient and increasing the amount of spectrum available for use.”<sup>9</sup> The Commission reiterated that view in its first Report and Order

---

<sup>6</sup> Microsoft Comments at 7.

<sup>7</sup> See NPR Comments at 7, and Microsoft Comments at 7.

<sup>8</sup> See Microsoft Comments at 7.

<sup>9</sup> See *In the Matter of Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium*, Policy Statement, 14 FCC Rcd 19868, ¶ 2 (1999).

in this proceeding.<sup>10</sup> In fact, increased spectrum efficiency is a hallmark of the transition to DRB, which is occurring because broadcasters are investing in technologies that make more efficient use of the spectrum on which they already operate. Since the Commission has long stated its desire for more efficient utilization of spectrum, it should hesitate before imposing caps on subscription services. Indeed, such caps could curtail dramatically broadcasters' motivation to continue to invest in innovations that offer even greater efficiencies, as well as additional uses – be they subscription or not – for the spectrum on which they currently operate.

Finally, Clear Channel joins iBiquity Digital Corporation (“iBiquity”) in urging the Commission to view the “subscription services” potentially available through DRB more broadly than implied in the *Second FNPRM* and to keep in mind that DRB “conditional access” services have additional characteristics beyond the traditional “pay to listen” subscription service.<sup>11</sup> New technology allows these types of services to be used either with audio or datacasting.<sup>12</sup>

The potential applications for consumers of such datacasting services are exemplified by Microsoft's Smart Personal Objects Technology (SPOT) initiative, which uses DRB to transmit information to an individual's wristwatch.<sup>13</sup> Clear Channel also has partnered with Microsoft to bring the benefits of its MSN Direct services, including the latest in news, sports, weather, and traffic information to its audience via data delivery using DRB technology. Clearly this type of “subscription” service is distinct from a “pay per listen” service. This distinction should give the Commission further reason to pause before crafting rules that could inhibit further innovation.

---

<sup>10</sup> *In the Matter of Digital Audio Broadcasting Systems And their Impact on the Terrestrial Radio Broadcast Service*, First Report and Order, 17 FCC Rcd 19990 (2002) at ¶ 7.

<sup>11</sup> *See* iBiquity Comments at 3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *See* Microsoft Comments at 3.

**III. THE RECORD IS CLEAR: THE COMMISSION MAY NOT IMPOSE DRB SPECTRUM FEES ABSENT AN EXPRESS GRANT OF CONGRESSIONAL AUTHORITY; MOREOVER, SUCH FEES WOULD HARM THE TRANSITION TO DIGITAL RADIO**

The record reflects a clear consensus that spectrum fees would not serve the Commission's goals of advancing the transition to digital radio broadcasting, and that, in any event, the Commission lacks authority to impose spectrum fees on digital radio broadcasters.<sup>14</sup> Indeed, the only commenter supporting such fees — the PIC — relies on a flawed understanding of the Commission's Title III authority that, were the Commission to move forward on such a basis, would contravene the established boundaries on its authority set forth in the landmark Supreme Court case, *United States v. Southwestern Cable*.<sup>15</sup> In that case, the Court held that the Commission cannot use its ancillary jurisdiction to “achieve plenary authority over ‘any and all enterprises which happen to be connected with one of the many aspects of communication.’”<sup>16</sup>

The PIC offers two bases on which it asserts that the FCC has authority to impose spectrum fees on subscription-based services. First, it contends that the absence of explicit Congressional direction to the Commission on how to implement the transition to DRB leaves the question entirely within the Commission's discretion.<sup>17</sup> Second, the PIC argues that, “[d]uring the digital radio transition, broadcasters will have the opportunity to occupy additional, valuable spectrum with revenue-generating subscription services...[and that to] allow broadcasters to use the additional spectrum without any attending obligations or fees would lead

---

<sup>14</sup> See iBiquity Comments at 7; NPR Comments at 13; Cox Radio Inc. (“Cox”) Comments at 8; NAB Comments at 8; State Broadcasters Comments at 3-4.

<sup>15</sup> *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968).

<sup>16</sup> *Id.* at 164.

<sup>17</sup> See PIC Comments at 5.

to a windfall” in contravention of the unjust enrichment prohibition contained in Section 309(j) of the Commission’s rules.<sup>18</sup> The PIC’s analysis fails on both counts.

With regard to the Commission’s lack of authority, the law is clear: the Commission can act either pursuant to an explicit grant of authority from Congress or it can use its ancillary jurisdiction but only incident to carrying out functions within its authority.<sup>19</sup> The Commission has previously recognized this core limitation on its ancillary jurisdiction, namely, its exercise is constrained to performance of duties related to an express statutory obligation.<sup>20</sup> As iBiquity points out, “a review of the legislative history of the 1996 Telecommunications Act, fails to provide any example of Congress attempting to create parallel authority for the Commission with regard to digital radio when Congress provided the Commission with authority to collect spectrum fees on digital television (“DTV”) ‘ancillary or supplemental services.’”<sup>21</sup> Microsoft echoes this observation, stating: “...Congress’ grant of jurisdiction to the Commission in the DTV context does not automatically apply to DRB.”<sup>22</sup> The same point was not lost on Cox Radio, which states, “Congress of course imposed no similar fees on digital audio services, nor did it authorize additional spectrum resources for IBOC roll-out.”<sup>23</sup> Contrary to PIC’s assertion, the lack of an explicit congressional directive regarding the transition to DRB does not create a lacuna through which the Commission can proceed to impose unauthorized spectrum fees. In fact, just the opposite is true. The presence of explicit statutory authorization of spectrum fees

---

<sup>18</sup> PIC Comments at 6.

<sup>19</sup> *American Library Association v. Federal Communications Commission*, 406 F.3d 689, 692 (DC Cir. 2005).

<sup>20</sup> *In the Matter of Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6456 ¶ 95 (1999).

<sup>21</sup> iBiquity Comments at 8 (“Neither the legislation nor the legislative history mentions AM or FM radio or the applicability to radio broadcast stations of a fee on TV subscription services.”).

<sup>22</sup> Microsoft Comments at 9.

<sup>23</sup> Cox Comments at 8.

for digital television services, and the absence of such authority with regard to digital radio services, defeats the ancillary jurisdiction argument. If Congress had intended to confer authority on the Commission to impose spectrum fees on digital radio services, it certainly knew how to do so. It did not.

Further, the PIC's claim that fees are justified to ensure that broadcasters' use of "additional spectrum" does not lead to their "unjust enrichment" completely overlooks a key distinction between the transition to DRB and the transition to DTV, namely that the DRB transition is the result of substantial investment by radio broadcasters in technology that makes more efficient use of their *existing spectrum*. Unlike DTV, *no additional spectrum* has been loaned to — or will be used by — radio broadcasters who offer DRB services. The Commission has recognized this critical distinction,<sup>24</sup> which was also echoed by other commenters, including iBiquity, which stated, "[h]ere, there is no new spectrum allocation to radio broadcasters for the digital conversion, and the Commission cannot claim the public interest requires the imposition of a fee to prevent a windfall."<sup>25</sup> Microsoft, which has been a vocal proponent of innovation resulting from more efficient use of spectrum in multiple FCC proceedings, recognizes that the transition to DRB is the result of a substantial investment by radio broadcasters in new technologies making more efficient use of the spectrum on which they currently operate.<sup>26</sup> As NAB points out, the full cost of radio broadcasters' digital upgrades, as well as the costs of developing and marketing new digital services, is being borne entirely by broadcasters.<sup>27</sup> Since

---

<sup>24</sup> See *Second Report and Order* at ¶ 7, ("We recognized that the IBOC system was spectrum-efficient because it can accommodate digital operations for all existing AM and FM radio stations with *no additional allocation of spectrum*") (emphasis added). See also *Id* at ¶ 13 ("...because radio stations, unlike television stations, are not using additional spectrum to provide digital service.").

<sup>25</sup> iBiquity Comments at 11.

<sup>26</sup> See Microsoft Comments at 9.

<sup>27</sup> See NAB Comments at 8.

this transition is the direct result of broadcasters' own investment, and not the product of any congressional mandate, any resulting success cannot be viewed as "unjust enrichment" as PIC contends. Moreover, as NAB further states, "imposing fees on these nascent services would only hinder their development to the detriment of consumers."<sup>28</sup> Similarly, Microsoft warns that, "if these services are to reach their full potential and deliver the greatest benefit, policy makers should not precipitously impose regulations on these new services that would stifle their development at this very early stage in their evolution."<sup>29</sup> Thus, contrary to PIC's claim that the imposition of spectrum fees is necessary to prevent unjust enrichment, in reality, spectrum fees would penalize broadcasters for investing in innovations that enhance spectrum efficiency, consequently chilling additional investment in this critical area. In this regard, the PIC's suggestion turns sound communications policy on its head.

Furthermore, it is absurd for PIC to be expressing concern about unjust enrichment when DRB subscription services — at least for the foreseeable future — are unlikely to be a source of revenue, much less a profit center.<sup>30</sup> Indeed, as Clear Channel discussed in its Initial Comments in this proceeding, broadcasters have risked enormous sums and devoted massive resources toward their transition to digital broadcasting, both in terms of facilities, programming and promotional activities, but are yet to realize any revenue.<sup>31</sup> The State Broadcasters Associations ("State Broadcasters") echoes this view, stating,

---

<sup>28</sup> NAB Comments at 8.

<sup>29</sup> Microsoft Comments at 2.

<sup>30</sup> See Cox Comments at 7. See also, Joint Comments of the North Carolina, Ohio and Virginia Association of Broadcasters ("NC-OH-VA Broadcasters Comments") at 2.

<sup>31</sup> See Clear Channel Comments at 6.

The great majority of Americans are not in the habit of paying for subscription radio services of any kind, and IBOC digital radio services are relatively new. Development of this market will take time, and success is not assured. There is no risk of windfall profits arising from nascent IBOC subscription services for the foreseeable future.<sup>32</sup>

As several broadcasters note, given the uncertainty surrounding the profitability of DRB services generally, the imposition of spectrum fees on subscription services — above and beyond what radio stations must already pay to operate and market their digital services — would likely create an insurmountable barrier to entry for broadcasters who otherwise are considering deploying this new technology and offering digital services to their listeners.<sup>33</sup>

#### **IV. NOW IS NOT THE TIME FOR NEW PUBLIC INTEREST REQUIREMENTS ON EITHER DRB OR ANALOG BROADCASTERS**

The Commission should follow the sound guidance of the majority of commenters who urge that it is premature, if not entirely unjustified, for the Commission to impose new public interest requirements on broadcasters offering DRB services.<sup>34</sup> Indeed, the Commission should resist using broadcasters' voluntary transition to a technology platform that has so much to offer American consumers as an opportunity to impose additional obligations on broadcasters, especially obligations that are not germane to DRB technology.

In particular, the Commission should not require radio stations to publish their public inspection files on the Internet. First, as NAB states, not every radio station in this country has a webpage.<sup>35</sup> Second, it is very likely that the substantial costs associated with making this data available online would adversely impact small broadcasters who, while they may have a website,

---

<sup>32</sup> State Broadcasters Comments at 5.

<sup>33</sup> See NAB comments at 8; and NC-OH-VA Broadcasters Comments at 2.

<sup>34</sup> See NAB Comments at 9; State Broadcasters Comments at 7; Microsoft Comments at 5; Cox Comments at 9; iBiquity Comments at 6; and NPR Comments at 16.

<sup>35</sup> NAB Comments at 11.

do not have the resources available to absorb the significant financial burden associated with digitizing the substantial amount of data contained in the public file. Finally, Clear Channel agrees with those who point out that the burdens attendant to a station's compliance with an obligation to post a public file to the Internet substantially outweigh any potential public interest benefit.<sup>36</sup> For example, Cox Radio notes that much of the pertinent information about a radio station is already available online via the Commission's own website.<sup>37</sup> Similarly, the North Carolina, Ohio and Virginia Association of Broadcasters ("NC-OH-VA Broadcasters") — as well as other state broadcasters associations<sup>38</sup> — caution that such a requirement could negatively implicate various state laws pertaining to data security, privacy and identity theft.<sup>39</sup> State Broadcasters appropriately question whether the Commission even has the authority to require radio stations to operate websites, much less websites with the technical sophistication necessary to hold complex document management servers.<sup>40</sup>

Importantly, a requirement that radio stations publish their public inspection file online is contrary to the purpose of the mandate to maintain the file. As several commenters point out, the Commission requires the public file to be physically located in or near the community of the licensee to provide easy access to members of that community who wish to inspect the file.<sup>41</sup>

---

<sup>36</sup> See Cox Comments at 9; State Broadcasters Comments at 7; NC-OH-VA Broadcasters Comments at 7; Joint Comments of the Alaska Broadcasters Association, the Arkansas Broadcasters Association, the Mississippi Association of Broadcasters, the New Mexico Broadcasters Association, the Radio Broadcasters Association of Puerto Rico and the Washington State Association of Broadcasters ("AK-MS-NM-PR-WA Broadcasters Comments") at 8.

<sup>37</sup> See Cox Comments at 9.

<sup>38</sup> See State Broadcasters Comments at 7.

<sup>39</sup> See NC-OH-VA Broadcasters Comments at 8.

<sup>40</sup> See State Broadcasters Comments at 7.

<sup>41</sup> NC-OH-VA Broadcasters Comments at 8; State Broadcasters Comments at 7 (citing 47 CFR 73.3526(b) and 47 CFR 73.1125).

This connection between a station and the community it serves has been a foundation of broadcasters' commitment to localism.<sup>42</sup> Therefore, while online publication would facilitate national or international access to the public inspection file, potentially leading to abusive fishing expeditions, it would also significantly undercut the traditional nexus between a radio station and the local community it serves. For that reason, Clear Channel urges the Commission to refrain from requiring radio stations to publish their public files on the Internet.

While Clear Channel appreciates the Commission's interest in bringing clarity and efficiency to the station's public reporting requirements, we are concerned that the creation and required use of a standardized form could give rise to several unintended negative consequences and suggest that the Commission defer at this time from moving forward on this proposal. For instance, as noted by NPR, because different stations pursue their public interest obligations differently, a standardized form may not accurately capture a given station's public service activities.<sup>43</sup> Moreover, as NAB and NPR state, the creation of a standardized form may have the effect of encouraging stations to produce programming that satisfies the *standard, nationally-applied form* rather than the needs of the community. They note that, at worst, this requirement could be viewed as unconstitutional content regulation, and, at best, would likely result in more homogenized, and less diverse, programming.<sup>44</sup> Clearly, any such consequence would not serve the Commission's goals of localism and diversity.

---

<sup>42</sup> AK-MS-NM-PR-WA Broadcasters Comments at 9.

<sup>43</sup> See NPR Comments at 18-19.

<sup>44</sup> See NAB Comments at 10 and NPR Comments at 19.

The Commission should heed the call of commenters who agree with Clear Channel that there is no need at this time to revisit the Commission's rules regarding automated operations.<sup>45</sup> As many of these entities point out, the dramatic technological advances that have been made since the Commission first issued its automation rule in 1995 have strengthened the EAS system and continue to improve service to smaller communities.<sup>46</sup> Broadcasters have been able to harness these advances to maximize scarce resources to enable further investment in unique programming, news and information services. Broadcasting is not unique in employing automation. Every sector of the American economy has enjoyed enhanced productivity, permitting more rational allocation of people's talents and skills, as a consequence of automation. Now is certainly not the time to turn back the clock. Clear Channel agrees with NPR's final analysis that, given the expense of the conversion to DRB and the uncertainty surrounding the public's adoption of the technology, any effort to restrict automation is more likely to obstruct, rather than advance, the transition to digital radio.<sup>47</sup>

Finally, the PIC's suggestion that the Commission adopt a complex "Las Vegas buffet-style" menu of public service options is unwarranted.<sup>48</sup> As is often the case with such a smorgasbord approach, the options on this menu will most likely cause the Commission indigestion as it attempts to implement such a complicated labyrinth of requirements.

---

<sup>45</sup> See NPR Comments at 20; See also NAB Comments at 12-15, NC-OH-VA Broadcasters Comments at 9; State Broadcasters Comments at 8-9; Christina Broadcasting System, Ltd at 3.

<sup>46</sup> See Native Christian Voice Comments at 5; Houston Christian Broadcasters, Inc. Comments at 5; The Praise Network, Inc. Comments at 5; The Moody Bible Institute of Chicago Comments at 4.

<sup>47</sup> See NPR Comments at 20.

<sup>48</sup> See PIC Comments at 16.

**V. CONCLUSION**

As the Commission moves forward in its consideration of its *Second FNPRM* regarding the transition to DRB, it should strongly consider the comments of Clear Channel which were supported by an overwhelming majority of commenters, urging the Commission to rely to the greatest extent possible on market forces, as opposed to burdensome regulations, to advance this critical transition. In this regard, the Commission should appreciate that all but one of the commenters believes the Commission lacks the authority to impose spectrum fees on subscription based DRB services, and a similar majority comment that now is not the time to impose any new public service obligations on either DRB or analog broadcasters.

Respectfully submitted,

**CLEAR CHANNEL COMMUNICATIONS, INC.**



---

Andrew W. Levin  
Executive Vice President, Chief Legal Officer  
and Secretary  
Clear Channel Communications, Inc.  
200 East Basse Road  
San Antonio, Texas 75209  
(210) 822-2828

November 14, 2007