

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Entercom Communications Corp.	)	RM-11684
Petition to Amend Section 73.1216	)	
Licensee-Conducted Contests	)	
	)	

To: The Office of the Secretary

**COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.  
IN SUPPORT OF PETITION FOR RULEMAKING**

Pursuant to the Commission's *Public Notice* of November 20, 2012,<sup>1</sup> Clear Channel Communications, Inc. ("Clear Channel") hereby submits its comments in support of the captioned Petition for Rulemaking (the "Petition") filed on January 20, 2012, by Entercom Communications Corp. ("Entercom"). The Petition requests the Commission amend 47 C.F.R. § 73.1216, its rule governing licensee-conducted contests (the "Contest Rule"), to "reflect today's communications landscape and thus better serve the public."<sup>2</sup> Specifically, the Petition seeks to update the Contest Rule to give licensees additional, non-broadcast options for disclosing material contest terms, including disclosure via a website, email, facsimile, mail, or in person upon request. The Petition asserts that "[t]hese methods provide a more effective way for the public to obtain full, accurate, and detailed contest information ... than waiting to hear periodic broadcast announcements."<sup>3</sup>

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<sup>1</sup> *Public Notice*, "Consumer & Governmental Affairs Bureau, Reference Information Center, Petition for Rulemaking Filed," Report No. 2968 (Nov. 20, 2012).

<sup>2</sup> Petition at 2.

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

As an owner of radio stations across the country, Clear Channel supports the Petition. Clear Channel agrees with Entercom that the current Contest Rule is not in line with how the majority of Americans access and consume information in the 21<sup>st</sup> century. The rule should be modernized to ensure it continues to best serve the public interest purpose for which it was designed.

I. Non-Broadcast Disclosure Benefits the Public and Broadcasters and Advances the Goals of the Contest Rule

Entercom's Petition observes what cannot seriously be disputed: Americans today live in an age of instantaneously accessible information. 21<sup>st</sup> century technology enables, and modern consumers expect, "to instantly access information at their fingertips by merely logging on to a website, conducting a Google search, or using an app on their smart phone."<sup>4</sup> The Petition cites to studies showing that the internet is both a ubiquitous and an essential source of information for Americans today.<sup>5</sup> It makes little sense, therefore, for the Commission to retain a Contest Rule that specifies on-air announcements as the only permissible method of informing the public about the material terms of station contests.

A. Entercom's Proposal Maintains the Core Elements of the Contest Rule While Modernizing It to Meet Consumers' Expectations

Importantly, Entercom's proposal seeks to modernize the Contest Rule rather than revise it wholesale. As proposed, the rule does not abandon the requirement that broadcasters disclose some contest information on-air. Even in cases where a licensee opts to utilize its station website or other means to fully disclose a contest's material terms, that licensee would still be required to

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 3.

“broadcast periodic announcements of how and where the public can obtain the material terms in written form.”<sup>6</sup>

Non-broadcast disclosure options are consistent with broadcasters’ current practices and meet consumers’ expectations about how to access information. As the Commission has recognized, “[t]he evolution of the Internet and the spread of broadband Internet access has made it easy for stations to post material online and for many consumers to find information online.”<sup>7</sup> Many, if not most, broadcasters already have websites where they provide a variety of programming-related content, news, and general station information to the public. Indeed, broadcasters often post full contest rules on their websites. Written material term disclosures for station-conducted contests could be posted on these same websites quickly and easily. Listeners, accustomed to finding information online, could then access these disclosures just as quickly and easily.<sup>8</sup>

B. On-Air Disclosure Is Disruptive and Does Not Advance the Goals of the Contest Rule

As Entercom’s Petition points out, on-air material term announcements are disruptive to both broadcasters and listeners. Radio licensees in particular must interrupt programming to broadcast material terms, some of which may be complex or lengthy. Listeners consider such announcements to be negative, undesirable, or simply boring content and therefore tune-out or

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<sup>6</sup> *Id.* at Appendix A. Such announcements could take a variety of forms, including a statement that “full contest rules and information can be found by visiting our website, [www.\[station call sign\].com](http://www.[station call sign].com).”

<sup>7</sup> *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, FCC 12-44, MM Docket No. 00-168 ¶ 10 (rel. April 27, 2012) (“*Second R&O*”).

<sup>8</sup> Petitioner cites research that indicates eighty-four percent of people aged 12 and older have access to the internet from some location. Petition at 3.

change channels. This drives away audience and also defeats the goals of the Contest Rule.<sup>9</sup>

Even if a listener does happen to hear the contest information, processing and remembering that information may prove difficult, if not impossible.

There is empirical data to support the notion that the Contest Rule's constrained approach actually disservices the rule's purpose. A study conducted by Media Monitors and attached hereto as Exhibit A suggests that audience erosion is twice as great during material term announcements than during "regular" commercial breaks. Using Arbitron PPM data, Media Monitors analyzed audience loss during material term announcements for a Katy Perry contest. The announcements were broadcast by Sacramento radio station KDND(FM) over a two week period in the summer of 2010. The study found that KDND lost more than a quarter of its net listening audience during commercial breaks containing a material term announcement for the contest. In contrast, KDND lost only 13% of its net audience during commercial breaks that did not contain the material term announcement. Such pronounced audience erosion indicates that alternative permissible means of disclosure would *better* effectuate the Contest Rule's goal of informing the public about contest terms. Updating the Contest Rule to allow disclosure via the internet, email, phone, fax, or in-person is therefore both a practical modernization and a pragmatic means of ensuring that broadcast contests are conducted in a fair and honest manner for decades to come.

C. Petitioner's Proposal Gives Broadcasters Flexibility in Meeting their Disclosure Obligations

By not delineating the precise method of disclosure, the proposal gives broadcasters flexibility to communicate contest information in the manner best suited to the nature of the

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<sup>9</sup> As petitioner notes, the Contest Rule was enacted to ensure that broadcast licensees promote and conduct contests in a fair and honest manner. Petition at 2 (*citing Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Notice of Proposed Rulemaking, 53 FCC 2d 934 (proposed June 25, 1975)).

contest.<sup>10</sup> Unlike in 1976, many contests today are promoted on-air but conducted primarily online via a station's website, Facebook page, or other social media site. Relying solely on broadcast announcements to provide material term information for these sorts of contests is inefficient and counter-intuitive. It is also highly probable that most listeners today will prefer to access full contest information online or through other non-broadcast means.<sup>11</sup> Broadcasters, therefore, should be given the flexibility to fulfill their disclosure obligations by providing written disclosures in conjunction with on-air announcements indicating how to obtain them.

### III. Amending the Contest Rule Is Consistent with the Commission's 21st Century Policy Goals and Commission Precedent

The Commission has recognized the importance of updating “decades-old requirement[s]” to “harness[ ] current technology” and advance the public interest.<sup>12</sup> Beginning in 2012, for example, the Commission required television broadcasters to place their public files online. The Commission reasoned that doing so was “plain common sense” because it made the files more accessible to the public and “substantially advance[d] the original goals” of the public file rule.<sup>13</sup> If this “plain common sense” dictates the online placement of television station public inspection files, it certainly also justifies optional online disclosure of material terms of a station-conducted contest. Allowing broadcasters to disclose material terms in written form online; in person; or via email, fax, or mail similarly makes the contest information more accessible to the public and advances the original goals of the Contest Rule. Each of these methods provides a more effective way for the public to obtain full, accurate and detailed contest information at a

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<sup>10</sup> Depending on the nature of the contest(s), broadcasters should also have the flexibility to decide how many times per day to air the on-air announcement and whether a single announcement is sufficient to convey information for all of its contests.

<sup>11</sup> Indeed, listeners will likely prefer such access even when the contest takes place on-air.

<sup>12</sup> Second R&O at ¶ 2.

<sup>13</sup> *Id.* at ¶¶ 6, 10-11; *see also* 47 C.F.R. § 73.3526.

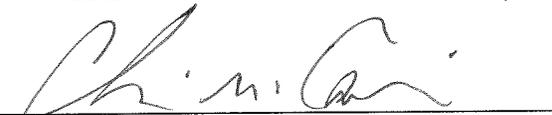
time of their choosing rather than waiting to hear periodic broadcast announcements of material terms. As noted in Section I above, non-broadcast disclosure options would in fact enhance listener awareness of material contest terms.

Revising the Contest Rule is also consistent with “The Information Needs of Communities” Report (“INC Report”) released by the Commission in June 2011. The INC Report discussed the need to remove unnecessary regulatory burdens on broadcasters who aim to serve their communities.<sup>14</sup> The Contest Rule is just such an unnecessary burden, particularly for radio licensees who must interrupt programming in order to broadcast the material terms of a contest. The burden increases in relation to the complexity of the contest’s material terms and the number of contests run concurrently by the station. The rule in its current form is also unnecessary, as there are often more efficient means of supplying more comprehensive contest information in a manner more convenient for listeners.

#### IV. Conclusion

Amending the Contest Rule to allow broadcasters flexibility in meeting their disclosure obligation is squarely within the public interest. Accordingly, Clear Channel supports the Petition and urges the Commission to commence a proceeding to amend the Contest Rule consistent with the Petition’s suggestions.

Respectfully submitted,  
CLEAR CHANNEL COMMUNICATIONS, INC.

By:   
Christopher Cain  
Vice President, Associate General Counsel  
Clear Channel Media & Entertainment  
200 E. Basse Road  
San Antonio, Texas 78209

Dated: December 18, 2012

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<sup>14</sup> See INC Report at 346.

# **Exhibit A**

## Katy Perry contest disclaimer on KDND study

Philippe Generali (pgeneral@mediamonitors.com)

### Media Monitors – 9/20/2010

The 35 sec. Katy Perry contest disclaimer has been played daily on KDND-FM in the Sacramento market between 8/23/2010 and 9/8/2010. Each time, the spot was aired in the middle of a commercial break at various times of the day. Using its Feature Tracker methodology, Media Monitors, an MRC accredited company, has summed and averaged the fluctuations of the audience around the times at which that message aired, as measured by Arbitron using the PPM technology.

*Figure 1* is a representation of this aggregated Audience Reaction over a 30 minute period . The grey zone is the commercial break inside which the Katy Perry promotion was played and the green arrow represents the placement of that spot inside the commercial break. It is aired on average in the middle of the spot breaks which are between 4 and 5 minutes long in total.

The black dotted line shows the average audience movement for the Arbitron panel of listeners of KDND-FM.

As evident on the graph, the aggregated Audience over the 17 instances of airplay decreases during the commercial break. This is usually expected for all commercial breaks. So, to establish some control data we will have to measure the expected audience erosion during commercial breaks on KDND and compare it to the audience erosion of these cumulated 17 instances where the contest disclaimer ran.

#### 1. Estimated Audience Erosion during a commercial break including the contest disclaimer

*Figure 2* and *3* show markers indicating the average audience index as measure by Arbitron's PPM before and after the commercial break containing a Katy Perry disclaimer. As we can see, at the beginning of the break (**Minute "-2"**), the audience has an **average index of 3.1**. At the end of the break (**Minute "+2"**), the audience has an **average index of 2.3**.

Over the cumulated 17 instances averaged and represented on this graph, the **net erosion** in audience index with the Katy Perry contest disclaimer present is then, in absolute terms:

$$2.3 - 3.1 = -0.8$$

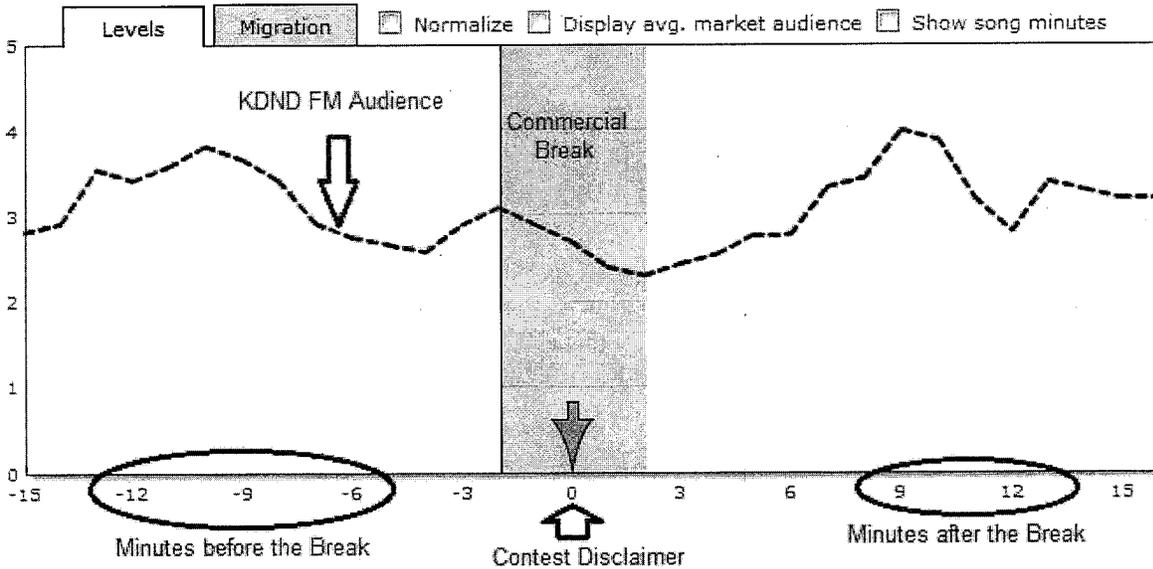
In relative terms, the **net audience erosion** is:

$$-0.8 / 3.1 = -25.8\%$$

In other words, **the station has lost more than a quarter of its listeners when a commercial break containing this contest disclaimer has been aired.**

#### 2. Estimated Audience Erosion during a regular commercial break

To find out if this is expected audience erosion around commercial breaks on KDND, we have aggregated ALL the commercial breaks of comparable length (4-5 minutes) during the same period between 8/23/2010 and 9/8/2010.



8/23/2010	
7:54:00 PM	Katy Perry
8/24/2010	
2:26:00 PM	Katy Perry
8/25/2010	
6:02:00 AM	Katy Perry
8/26/2010	
0:22:00 AM	Katy Perry
8/27/2010	
9:35:00 PM	Katy Perry
8/28/2010	
3:32:00 PM	Katy Perry
8/29/2010	
5:31:00 PM	Katy Perry
8/30/2010	
3:27:00 PM	Katy Perry
11:29:00 AM	Katy Perry
9/1/2010	
6:13:00 AM	Katy Perry
9/2/2010	
0:20:00 AM	Katy Perry
9/3/2010	
11:29:00 PM	Katy Perry
9/4/2010	
2:57:00 PM	Katy Perry
9/5/2010	
4:18:00 PM	Katy Perry
9/6/2010	
5:58:00 PM	Katy Perry
9/7/2010	
1:12:00 PM	Katy Perry
9/8/2010	
5:39:00 AM	Katy Perry

← Dates and times at which Contest Disclaimer aired →

KDND-FM/Sacramento "Katy Perry" 8/23/2010-9/8/2010 #17

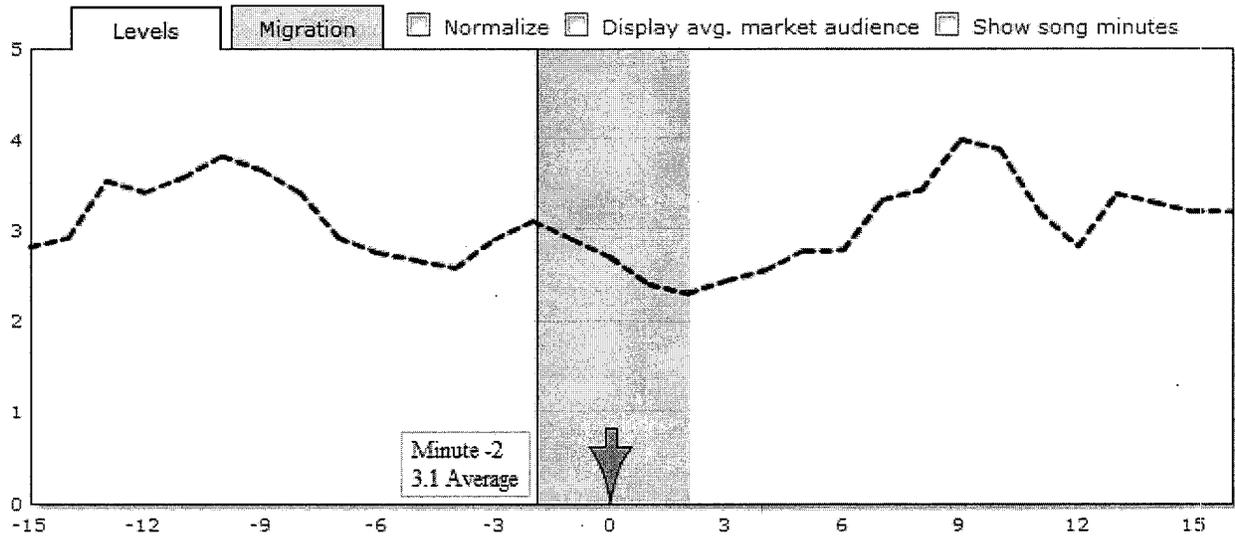


Figure 2

KDND-FM/Sacramento "Katy Perry" 8/23/2010-9/8/2010 #17

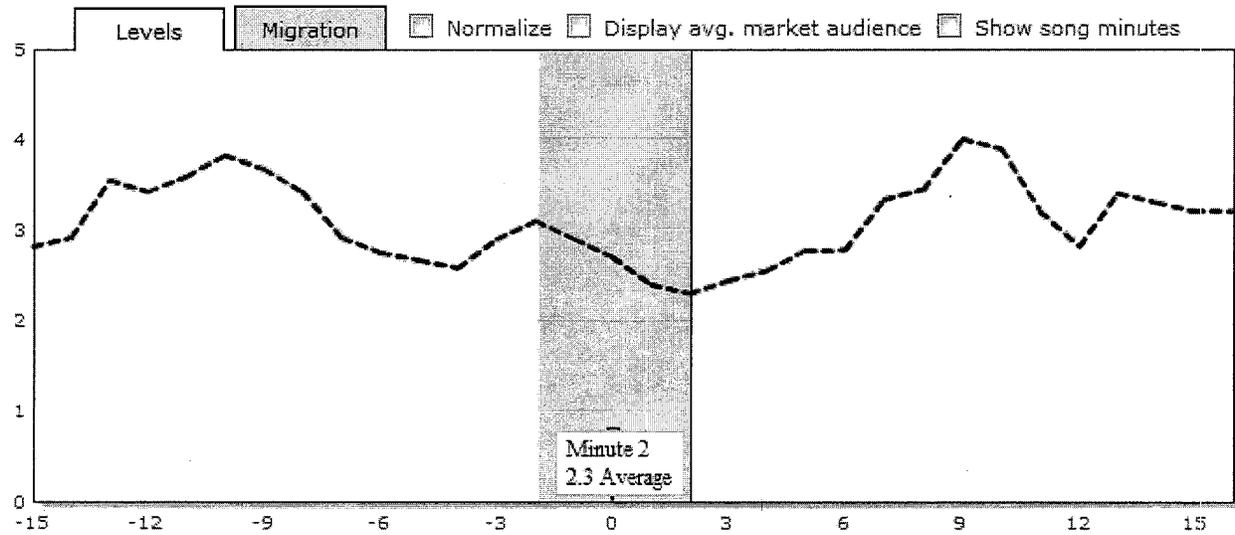


Figure 3

Below in Figure 4 is the graphic representation of the average Audience Reaction during the 368 occurrences of 4-5 minutes commercials breaks played on KDND during the same time period. "Minute 0" represents in this case the beginning of the commercial break.

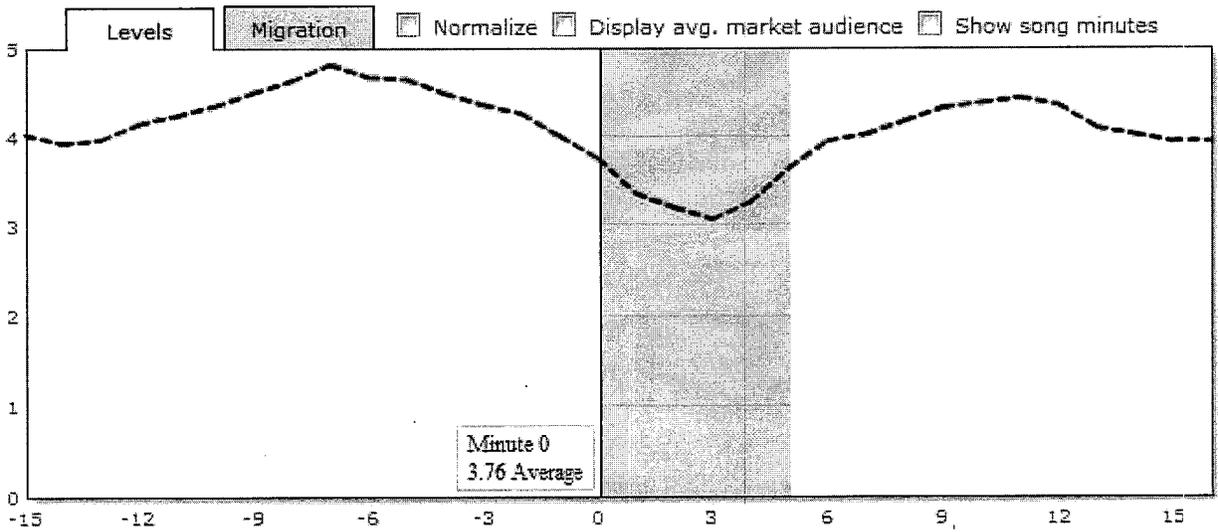


Figure 4

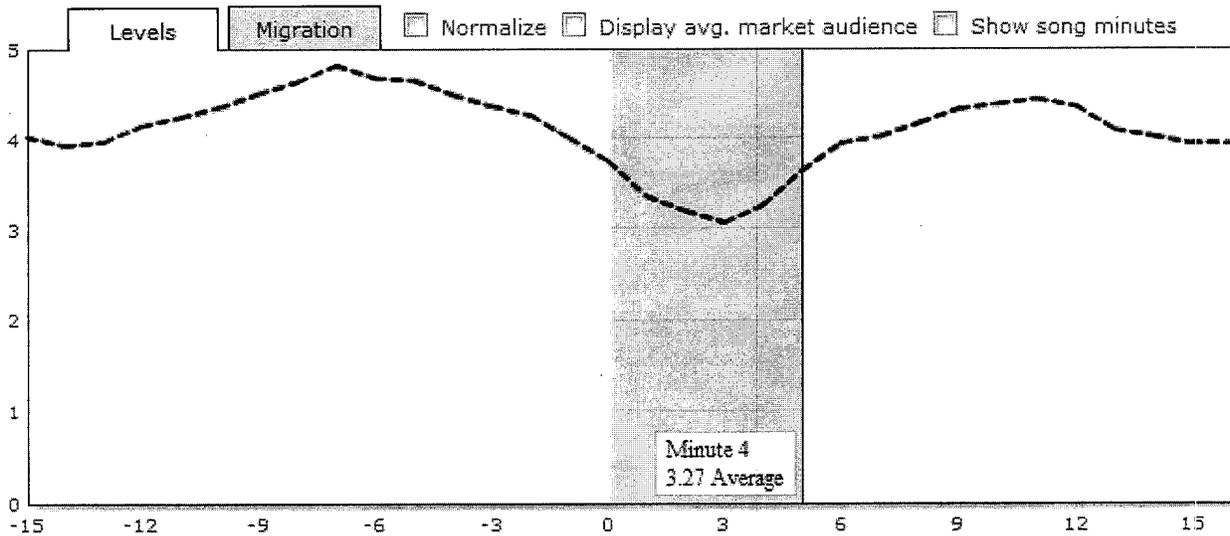


Figure 5

Figure 4 and 5 show markers indicating the average audience index as measure by Arbitron's PPM before and after the average commercial break on KDND. As we can see, at the beginning of the break (Minute "0"), the audience has an average index of 3.76. At the end of the break (Minute "+4"), the audience has an average index of 3.27.

Over the cumulated 368 instances averaged and represented on this graph, the **net erosion** in audience index during commercial breaks is, in absolute terms:

$$3.27 - 3.76 = -0.49$$

In relative terms, the **net audience erosion** is:

$$-0.49 / 3.76 = -13.0\%$$

In other words, **the station has lost on average 13% of its listeners during commercial breaks between 8/23/2010 and 9/8/2010.**

3. Conclusion:

**The audience loss on KDND when a commercial break contains the Katy Perry contest disclaimer has been almost TWICE (25.8% vs 13%) as important as what it has been otherwise for a regular commercial break during the same period.**