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Communications Advisory

Broadcasters Pay \$12.5 Million to Settle Payola Allegations

The FCC today released four Orders adopting Consent Decrees with CBS Radio, Citadel Broadcasting Corporation (“Citadel”), Clear Channel Communications, Inc. (“Clear Channel”), and Entercom Communications Corp. (“Entercom”). Pursuant to the Consent Decrees, the broadcasters agreed to pay a combined \$12.5 million to close investigations into possible violations of the FCC’s sponsorship identification rules. Specifically, the Consent Decrees resolved allegations that the broadcasters may have accepted cash or other consideration from record labels in exchange for airplay of artists from those labels without disclosing those arrangements, a practice commonly referred to as “payola.”

CBS Radio agreed to pay \$3 million, Citadel agreed to pay \$2 million, Clear Channel agreed to pay \$3.5 million, and Entercom agreed to pay \$4 million in voluntary contributions to the United States Treasury. Each broadcaster also agreed to implement certain Business Reforms and a so-called Compliance Plan within 60 days and to keep the reforms and compliance measures in effect for three years. The Compliance Plan and Business Reforms effectively establish a safe harbor program that all broadcasters should consider using as a model to adopt their own proactive measures in order to avoid penalties for employee violations of the Commission’s payola prohibitions.

Key provisions of the Business Reforms and Compliance Plan, copies of which are attached, include:

1. Prohibition on company stations and employees soliciting or receiving from record labels cash or other items of value in exchange for airplay except where such exchange complies with the sponsorship identification rules, the receipt of any such items of value is documented in a database and as otherwise specified in the Consent Decree, and
 - a. the items fall into one of the following categories and do not exceed certain dollar amounts and limited quantities set forth in the Consent Decree: (i) CDs and other promotional items; (ii) concert tickets; (iii) modest personal gifts to station employees for a life event, professional achievement or holiday, or

- to the station to commemorate an achievement of the company, the station or the record label or its artist; (iv) meals and entertainment; (v) travel and lodging expenses;
- b. the items are used as contest prizes or giveaways;
 - c. the items are in payment for on-air advertising;
 - d. the parties have entered into a commercial transaction for the distribution or promotion of the record label's artists, songs, or records; or
 - e. a record label subsidizes the reasonable costs related to the appearance, performance or interview of its artist.
2. Prohibition on acceptance of items of value from independent music promoters unless the promoter certifies in writing to the broadcaster that no compensation to the promoter from a record label is based on airplay;
 3. Appointment of a company-wide Compliance Officer and market-level Compliance Contacts responsible for implementation, monitoring, and reporting on compliance with the Business Reforms and sponsorship identification rules;
 4. Regular training of programming personnel regarding payola prohibitions; and
 5. Suspension and remedial training of accused employees and immediate investigation of the matter by the company in the event that the company receives a Notice of Apparent Liability, Order or similar Commission document proposing enforcement action as a result of a payola violation occurring after the effective date of the Consent Decree and, in the event the Commission determines that a violation has occurred, further disciplinary action, up to and including termination, of any employee found to have been materially involved in the violation.

We would be pleased to help licensees tailor a program that meets their own unique circumstances but that offers significant protection in the event of future payola investigations.

For further information, please contact:

Clifford M. Harrington (bio)

Washington DC
+1.202.663.8525
clifford.harrington@pillsburylaw.com

Richard R. Zaragoza (bio)

Washington DC
+1.202.663.8266
richard.zaragoza@pillsburylaw.com

Veronica M. Tippett (bio)

Washington DC
+1.202.663.8491
veronica.tippett@pillsburylaw.com

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ATTACHMENT A

Company Compliance Plan

Company has developed, and is implementing, a Company-wide Compliance Plan for the purpose of furthering compliance with the Sponsorship Identification Laws and adherence to the Business Reforms set forth on Attachment B. The Compliance Plan consists of the following components:

1. Commitment to High Standards on Pay-for-Play; Annual Report.

A. Commitment to High Standards on Pay-for-Play. Company commits to enforcing high standards with respect to the Sponsorship Identification Laws to avoid violations and the appearance of impropriety in the area of music selection.

B. Annual Report. The Compliance Officer, as defined below, shall submit annual reports to Company's Board of Directors and the Commission concerning Company's compliance with this Agreement and with the Business Reforms for a period of three years from the effective date of this Agreement.

2. Training of Programming Personnel. Company will conduct appropriate training of its employees who are on-air talent and/or materially participate in the on-air broadcast of program material or in the making of programming decisions and their supervisory employees ("*Programming Personnel*") in the accompanying Business Reforms and the Sponsorship Identification Laws, including the FCC's interpretation of such statutes and regulations regarding payola and related issues. Such training will be provided to all current Company Programming Personnel within 60 days of the Effective Date. The training will be provided to all new Company Programming Personnel promptly after they commence their duties. Refresher training will be provided to all employees described above at least once every twelve months.

3. Compliance Officer and Market-Level Compliance Contacts.

A. Compliance Officer. Within 45 days of the Effective Date, Company shall designate a Compliance Officer, whose responsibility shall be to seek to ensure Company's compliance with the Business Reforms attached to this Consent Order and with the Sponsorship Identification Laws through the following duties: (a) the implementation, effectuation, and supervision of the training program with regard to the Business Reforms and the Sponsorship Identification Laws for all Company Programming Personnel; (b) being accessible by telephone and/or e-mail to any Company employee who seeks advice on compliance with the Business Reforms and the Sponsorship Identification Laws or who wishes to report potential violations of such policies and laws; (c) the development and implementation of procedures designed to ensure Company's continuing compliance with the Business Reforms and the Sponsorship Identification Laws; (d) monitoring Company's compliance with the Business Reforms and the Sponsorship Identification Laws; (e) reporting on a quarterly basis to the General Counsel of Company regarding compliance of Company Stations and employees with the Business Reforms and the Sponsorship Identification Laws; (f) reporting on an annual basis to Company's Board of Directors and the Commission concerning the compliance of the Company Stations with the Business Reforms and the Sponsorship Identification Laws; and (g) such other activities as the Compliance Officer deems necessary or appropriate to carry out his or her duties.

B. Market-Level Compliance Contacts. Within 45 days of the Effective Date, Company shall designate a Compliance Contact for each market in which there is a Company station that

plays new music. The market-level Compliance Contact shall work in conjunction with the Company Compliance Officer in the implementation and monitoring of the Business Reforms in such market.

4. Database and Hotline.

A. Database. Company shall maintain all documentation of expenditures required by this Agreement in the database(s) or in hard copy for a period of not less than three (3) years. The database(s) shall be available for inspection by the Commission upon request.

B. Hotline. Company Compliance Officer shall maintain a hotline for employees to call the Compliance Officer to obtain advice on compliance with the Business Reforms, and report violations of the Business Reforms.

5. Contractual Agreements. Company will ensure that all contractual agreements with respect to Programming Personnel include a contractual clause relating to compliance with the Sponsorship Identification Laws.

6. FCC Enforcement Actions. If a Company Station receives a Notice of Apparent Liability, Order or similar Commission document proposing a forfeiture and/or contemplating license non-renewal or revocation as a result of a violation of the Sponsorship Identification Laws occurring after the effective date of the Consent Decree, the following steps will be taken:

A. Each employee accused of violating the Sponsorship Identification Laws will be suspended and an investigation will immediately be undertaken;

B. Each such employee will be required to undergo remedial training on Business Reforms and the Sponsorship Identification Laws and satisfy the Compliance Officer and Company Station management that he or she understands such regulations and policies before resuming his or her duties.

C. If a Notice of Apparent Liability, Forfeiture Order, Order or similar document assessing or proposing a forfeiture, denying a renewal application and/or revoking a license issued by the FCC is finally adjudicated and Company is finally found to have violated the Sponsorship Identification Laws that results in such action by the Commission, the employee(s) materially involved in the violation or violations that are the subject of such Commission or Bureau action will be subject to further disciplinary action, up to and including termination.

ATTACHMENT B

Company Business Reforms

Company has implemented and is implementing on a Company-wide basis, certain business reforms for the purpose of furthering compliance with the Sponsorship Identification Laws. To the extent not already undertaken, within 60 days of the Effective Date of the Consent Decree to which this statement is attached, Company shall implement and adhere to the following practices (“*Business Reforms*”).

1. Prohibited Activity.

A. Record Label and Record Label Employees. Neither Company, any Company Station, nor any Company employee (collectively, “*Company Parties*”) shall solicit, receive, or accept cash or any other item of value from a Record Label or Record Label employee in, or as part of, an exchange, agreement, or understanding to provide or increase airplay of music provided by any Record Label, except as expressly permitted under ¶ 2, below, and provided that all such activity complies with applicable Sponsorship Identification Laws. As used in these Business Reforms, the term “*Record Label*” means (a) any entity that manufactures or distributes audio recordings of music, (b) any artist under contract to a Record Label (an “*Artist*”), and (c) any representative of the Record Label or an Artist, including independent promoters.

B. Independent Music Promoters. Company Parties shall not accept any item of value from an independent music promoter, unless that promoter certifies in writing to Company that no compensation to the promoter from a Record Label is based upon airplay.

2. Permissible Restricted Activity. Company Parties may engage in the following activities with Record Labels, subject in each case to compliance with the Sponsorship Identification Laws and the following restrictions, and to adherence with the disclosure and documentation requirements set forth in ¶ 3 below.

A. Contests or Giveaways: Company Parties may solicit, receive and accept items of value, including but not limited to promotional items, gift cards, CDs, gift certificates, concert tickets, airfare, hotel rooms, vouchers and cash, from Record Labels to give away on the air, at a Company Station event or promotion, or for the benefit of charity, to persons or entities other than Company employees (or members of their immediate families or households). Contest rules and on-air announcements relating to such contests shall clearly indicate the value of the prize(s) as required by FCC rules and identify the Record Label as the provider of the prize(s) to be awarded.

B. Advertising: Company Parties may solicit, receive and accept payment (in cash or other items of value) from Record Labels for on-air advertising, provided that the announcement clearly identifies the Record Label as the sponsor of the advertisement.

C. Other Commercial Transactions: Company Parties may enter into commercial transactions with Record Labels pursuant to which a Company and a Record Label may license, sell or otherwise agree to distribute or promote the Record Labels’ Artists, songs or records.

D. Artist Appearances and Performances: Company Parties may arrange for Artists to appear or perform at events or interviews, including under circumstances where a Record Label has subsidized reasonable costs related to the appearance, performance or interview. Company Stations’ on-air announcements of an Artist’s performance that is subsidized in any part by the Record Label shall indicate clearly that the Artist’s appearance is sponsored by the Record Label. The broadcast on a

Company Station of all or a portion of the Artist's live performance at the event is permitted, provided that any such broadcast complies with the Sponsorship Identification Laws.

E. Nominal Consideration:⁴ Company Parties may solicit, receive and accept the following items of value from Record Labels for use by a Company Station:

(i) CDs and other promotional items of nominal value. A Company Station may solicit, receive and accept from Record Labels: (A) electronic copies of songs and up to 20 copies of the same CD to familiarize Company employees with recordings; (B) electronic copies of recordings for posting on Company Station websites to familiarize visitors to such websites with the Artists' recordings, and (C) promotional items intended for the personal use of Company Parties, if the value of each such individual item does not exceed \$25, such as T-shirts, key chains, coffee mugs, baseball hats, posters, pens and bumper stickers.

(ii) Concert tickets. A Company Station may solicit, receive and accept up to 20 tickets (which may include associated backstage or "VIP"-type passes) for a single-day concert, for each day of a multi-day concert, and/or to an industry event to be used by Company employees to familiarize them with the performing Artists. Tickets provided by Record Labels for Company employees who are working at the concert and/or industry event (e.g., technicians, on-air talent, promotions staff, etc.) shall be subject to the disclosure and documentation provisions of ¶ 3, below, but shall not be counted towards the 20 ticket limit.

(iii) Modest personal gifts for life event, professional achievement and holidays, or gifts commemorating achievement by Company or a Record Label. Company employees may receive and accept reasonable gifts from a Record Label commemorating life events, professional achievements and holidays. A "reasonable" gift is one whose value the employee has no reason to believe is greater than \$150. An example of a life event would include a birthday, wedding or the birth of a child. An example of a professional event would be a job promotion or the winning of a music industry award. A Company Station may receive and accept from a Record Label gifts that commemorate achievements of Company, the Company Station, the Record Label, or the Record Label's Artists. An example of such a gift would be a plaque commemorating an Artist's achieving "gold record" level sales.

(iv) Meals and entertainment. Company employees may receive and accept meals and entertainment in an amount not to exceed \$150 per person, per event, provided that the event is attended by a Record Label employee and has a legitimate business purpose, and any payment is consistent with the value of the meal or entertainment. Company employees may receive and accept meals and entertainment from a Record Label in an amount that exceeds \$150 per person, provided that the event is attended by a Record Label employee, has a legitimate business purpose, and is approved in writing by the Compliance Officer, as provided in the accompanying Compliance Plan. A Company employee may also receive and accept meals and entertainment from a Record Label for the benefit of his/her spouse or "significant other" accompanying the employee at such occasion, consistent with and subject to the limitations of this provision.

(v) Travel and lodging expenses. A Company Station may receive and accept from a Record Label reasonable travel and lodging expenses for Company employees to attend live performances or appearances by Artists for the purpose of familiarizing such employees with a Record Label's Artists. A Company Station may also receive and accept from a Record Label reasonable travel and lodging expenses to industry events if the Company Station provides, to the satisfaction and approval of the Compliance Officer, a legitimate business purpose underlying the Record Label's payment of such expenses. Each Company Station shall be limited to 20 such trips annually, to be

⁴ Dollar amounts in this section may be adjusted for inflation based on the Consumer Price Index.

allocated among Company employees at the discretion of the Company Station. For purposes of these Business Reforms, “reasonable travel and lodging expenses” means commercial airfare (coach class), train or car service and a sufficient number of nights lodging to accomplish the intended business purpose. All travel and lodging expenditures must be approved in advance and in writing by the Compliance Officer. A Company employee may also receive and accept meals and entertainment during such trips, consistent with and subject to ¶ 2E(iv), above.

F. Nothing herein shall prohibit a natural increase in airplay of an Artist’s music during the period surrounding, and coincident with (i) a contest or giveaway that promotes that Artist and (ii) the Artist’s appearance or performance at an event, provided that, to the extent the increase in airplay results from an agreement or understanding with the Record Label or Artist, such increased airplay shall comply with the Sponsorship Identification Laws.

3. Mandatory Documentation. Company shall record and document all activity set forth in ¶ 2 as follows:

A. Database record of items of value received from a Record Label. Company shall establish and maintain one or more databases (collectively, the “*Database*”) containing a record identifying all items of value received by each Company Station or Company employee from Record Labels (exclusive of Artist performances and commercial transactions with Record Labels), and the disposition of such items shall be recorded as follows. In the case of each item of value that exceeds \$25 in value (on an individual per item basis) intended to be awarded in a contest or given away by a Company Station, the Database shall record the date and manner of disposition and recipient of each such item. Items received for use by a Company Station or its employees (such as CDs for review by station employees and concert tickets) shall be so recorded. Items in excess of \$25 received by Company or Company employees personally or in connection with business-related meals, entertainment and travel shall be recorded in the Database separately.

B. Contests or Giveaways. In addition to the documentation maintained in the Database in each instance where Company solicits, receives or accepts an item of value from a Record Label to give away on the air, Company shall (i) verify in writing to the Record Label that the contest prize(s) will not be given away to an employee of a Company Station (or to members of their immediate families or households); and (ii) for each item of value given away that exceeds the monetary reporting threshold established by the Internal Revenue Service, maintain a record verifying that a contest winner has been selected, including the full name and address of the recipient of the prize, and provide this information, in writing, to the Record Label upon request.

C. Advertising by Record Labels. All advertising by Record Labels shall be subject to a written agreement and recorded in one or more separate databases.