

ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

CBS RADIO,

Respondent.

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

In 2004, Eliot Spitzer, Attorney General of the State of New York, initiated an investigation pursuant to the provisions of Article 22-A of the General Business Law and Section 63 of the Executive Law into practices relating to the promotion of music to radio broadcasting stations. The Office of the Attorney General (“OAG”) finds that the practices discussed below are pervasive within the radio broadcast industry and by no means unique to CBS Radio.

Based on this investigation, the OAG makes the following findings:

PRELIMINARY STATEMENT

1. Respondent CBS Radio Inc. (“CBS Radio”)¹ is a Delaware corporation, with its principal place of business in New York located at 1515 Broadway, New York, New York 10036. CBS Radio is a wholly owned subsidiary of CBS Corporation, and operates approximately 178 radio stations nationwide including stations in New York State.

2. The broadcast media are, in the words of the United States Supreme Court, a “valuable and limited public resource.” By law, radio stations can therefore only be licensed –

¹ CBS Radio was known as Infinity Broadcasting when this investigation was commenced.

and can only make use of their extremely valuable portion of the limited radio spectrum – if they serve the “public interest, convenience and necessity.”

3. For the music industry, radio stations serve as vehicles for record labels to expose listeners to their music, as stations play, or “spin,” their songs. The resulting competition for radio airplay has created what is effectively a black market for the illegal sale of “spins,” in which radio stations accept payments or non-cash consideration from record labels, or their independent promoter representatives, in exchange for airplay and in contravention of the public interest they are charged with serving.

4. Certain stations owned by CBS Radio have participated in deception against their listeners. Particularly, certain CBS Radio stations in the Rochester New York area have openly traded airplay for revenue. In some instances, they have done so by soliciting benefits – such as contest prizes, payment of invoices, and additional promotional funding – directly from labels in return for playing their songs. At other times, certain CBS Radio stations have received funds from “independent promoters,” who are funded directly by record labels in exchange for securing “adds” of new music. In return, the promoters funnel some of the labels’ money to the stations by granting them an annual promotional budget and “billbacks,” additional promotional expenses provided for adding a specific song. The result, in both cases, has been the same: the sale of those stations’ valuable air time to the highest bidder, without disclosure to its listeners.

5. CBS Radio employees have found other ways to engage in “pay-for-play practices.” Some CBS Radio employees in the Rochester market have sold airtime to allow record labels to purchase “detections,” false hits on the charts maintained by record monitoring agencies to compile music charts. Other employees have participated in promotional agreements under which labels have purchased advertising and received adds. Some CBS Radio stations have sponsored promotions through which

labels provide prizes and in return the stations give a certain number of spins to particular songs.

6. Through these acts, certain CBS Radio stations have placed their airtime up for sale, and have concealed from listeners and reporting services the detrimental impact of their deceptive practices.

I. Payola: The Legal Framework

7. The term “payola” refers to the music industry practice of exchanging money or other valuable consideration for increased exposure or promotion of a particular piece of music. Payola, or “pay-for-play,” has existed in one form or another since the industry’s inception.

8. Payola became a particularly acute problem in the 1950’s and 1960’s, when record companies and their agents brazenly bribed disc jockeys to gain airplay. Following an investigation in November 1959 by the House Subcommittee on Legislative Oversight, Congress enacted the Communication Act Amendments of 1960 to control the practice. The 1960 Amendments were themselves later amended to require broadcasting stations to make announcements disclosing the receipt of valuable consideration provided in exchange for airplay and identifying the source of the consideration. See 47 U.S.C. § 317. This “payola statute” also requires radio stations to exercise due diligence to ensure that the required announcements take place.

9. Further, pursuant to another amendment to the Act, any employee of a radio station who accepts or agrees to accept money, services or other valuable consideration; or any person who pays or agrees to pay such radio station employee money, services or other consideration in exchange for the broadcast of any particular piece of programming must disclose this payment to the station. See 47 U.S.C. § 508. Further, failure to comply with these

disclosure requirements constitutes a misdemeanor and subjects the violator to imprisonment of up to one year and fines of up to \$10,000. *Id.*

10. Payola has long been condemned as a deceptive practice that conceals the sale of the public airwaves. In 1959, the Federal Trade Commission brought numerous actions against record labels for payola, characterizing the practice as “inherently deceptive.” In findings that remain valid today, the FTC stated that payola is used:

to mislead the public into believing that the records “exposed” were the independent and unbiased selections of the disk jockeys based either on each record’s merit or public popularity. The deception of the public has the capacity and tendency to cause the public to purchase the “exposed” records which they otherwise might not have purchased and also, to enhance the popularity of the “exposed” records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the “exposed” records. (*In the Matter of Chess Record Corp, et al.*, 59 F.T.C. 361 (1961))

11. New York State law proscribes deceptive practices like payola and others set forth in this Assurance of Discontinuance. Under the State’s commercial bribery statute, New York Penal Law § 180.00, it is a misdemeanor for anyone to confer (or offer to confer) a benefit upon another party with the intent to influence the recipient’s conduct regarding the business affairs of the recipient’s employer, without the employer’s consent.

12. Section 349 of the New York General Business Law (“GBL”) empowers the Attorney General to seek injunctive relief when any person or entity has engaged in deceptive acts or practices in the conduct of any business. Section 350-d of the GBL empowers the Attorney General to seek, *inter alia*, civil penalties in the amount of \$500 for each violation of section 350, the False Advertising Statute, and section 349, the Deceptive Practices Statute.

13. Finally, Executive Law §§ 63(12) and 63(15) empower the Attorney General to seek injunctive and equitable relief when any person or business entity has engaged in or otherwise demonstrated repeated fraudulent or illegal acts in the transaction of business.

II. The Workings of Modern Radio

14. The radio industry has undergone significant changes since the initial payola scandal broke in the 1950's. Station ownership has consolidated in the hands of a small number of conglomerates, a process that has accelerated since the Telecommunications Act of 1996, which substantially increased the number of stations that could be owned by a single entity.

15. Radio stations also no longer rely on disc jockeys to choose recorded music for broadcast. Rather, programming personnel have responsibility for formulating "playlists," strict and detailed schedules setting forth every song the radio station will play each week. As they update the playlists from one week to the next, programmers generally remove a limited number of songs and add new songs to fill the vacated slots. The newly-added songs are referred to in the industry as "adds." Even when a record has been added, record labels continuously seek to increase the number of "spins" the record receives.

16. Radio stations employ a variety of formats, depending on the targeted demographic of the station. Only those formats that play a significant amount of new music make regular adds. In New York, several CBS Radio stations fit this description. These are WPXY-FM (top forty) and WZNE-FM (alternative) in Rochester; and WBLK-FM (Hip-hop and R & B), and WYRK-FM (country) in Buffalo. Other stations, such as WCMF (classic rock) and WRMM (soft rock) in Rochester, make occasional adds to their playlists.

17. Intense competition among record labels for the relatively small number of playlist slots has caused a variety of aggressive pay-for-play mechanisms to emerge. Thus, in an

effort to secure both adds and spins, record labels offer – and some CBS Radio stations have solicited – a wide range of valuable consideration. Record labels have provided expensive vacation packages, gift cards and other valuable items in exchange for airplay. Other employees have solicited these items for stations to use either to help meet their own operational needs or as prizes and “give-aways” designed to increase the size of the stations’ listening audience.

18. In an effort to dodge the payola laws, record labels and radio stations have also enlisted the services of independent promoters, or “indies.” Independent promoters are middlemen who act as conduits for delivery of the labels’ “promotional support” to the stations and help perpetuate the fiction that this support is not actually being delivered by the labels in exchange for airplay and therefore does not violate the payola statutes. Some CBS Radio stations have had longstanding relationships, in particular, with independent promoter Jeff McCluskey & Associates, Inc. (“JMA”).

19. Independent promoters receive compensation from the labels in exchange for each “add” they obtain. A portion of this money is then paid to the radio station. Ostensibly, the payment to the station compensates it for providing the promoter with early “notice” of the add; in practice, the payment constitutes prohibited compensation for the stations’ decision to add the song to its playlist.

20. Once a radio station has finished its playlist for the upcoming week, the station reports its adds to other music industry participants, including record labels and the two charting companies, Billboard and Radio & Records. These companies compile charts for various music formats that purport to reflect the popularity of individual songs based on radio airplay, as monitored by two other companies, BDS and Mediabase. BDS monitors stations electronically, searching for the “fingerprint” of each song, a small portion that will register as a “spin” in

BDS's system.

21. Billboard calls its charts "a reliable guidepost for anyone seeking to discover the globe's hottest musical acts," and its rankings can have a profound influence on the decisions made by radio stations in giving songs further airplay, and in the record selections made by large retailers. As a result, the ability to manipulate chart position has, like airplay itself, become a valuable commodity for which record labels are willing to pay, and in which certain CBS Radio stations have, at times, put up for sale.

22. The practice of "payola" has evolved into a corporate pay-for-play business strategy, developed and managed at the highest levels within the music industry. The primary loser is the music listener and consumer who is unaware of the deception and manipulation that corrupts radio station programming, and ultimately, record sales. Indeed, radio listeners are falsely led to believe that the radio programming they listen to is the product of editorial decision-making, and that songs played by radio stations are chosen based upon merit, and that songs reported as "hits" by charting companies have achieved a measure of objective, merit-based success. Radio stations and record labels cultivate these false expectations in an effort to manipulate consumer listening and purchasing decisions.

III. Certain CBS Radio Stations' Pay-for-Play Strategies

23. Rather than developing playlist and airing music based on artistic merit or editorial decision-making, some CBS Radio stations have provided airplay in exchange for valuable consideration.

24. At CBS Radio, general managers oversee both individual radio stations and groups of radio stations in a particular geographic region and are responsible for growing the broadcast cash flow of the stations. Program directors or vice presidents of programming report to general managers and are responsible for the week-to-week selection of songs, working with on-air personalities, commercials, contest promotions, and music flow, i.e., how songs are put

into the computer system and then played over the air. In the words of one station employee, these program directors are responsible for “anything you hear coming out of the speakers when you turn on a radio” and can be responsible for overseeing more than one radio station in a region. Each radio station also has a music director. Music directors report to program directors and are responsible for listening to, researching, and selecting music. They also act as liaisons between their radio stations and the record labels.

25. In recent years, some CBS Radio employees, particularly at the Rochester stations WPXY, WZNE, WCMF and WRMM, have traded airplay in exchange for receiving items of value from record labels; or payments from the independent promoter JMA. This practice had been encouraged by senior managers at these stations. Certain station officials took steps to stem these practices, including disciplining employees. Other employees, however, found new ways to sell airplay for either promotional or personal benefit.

A. The Sale of Airplay for Personal Benefits

26. John Hunerlach aka John McCrae, was employed by CBS Radio from 1999 through November 2004, as a program director and, prior to his termination, was vice president of programming. As vice president of programming, McCrae was responsible for overseeing programming on WPXY, WZNE, WCMF and WRMM. McCrae frequently used his position to obtain concert tickets, sporting events tickets, expensive trips and gift certificates from either record labels or independent promoters for his personal use in exchange for adds.

27. Occasionally, McCrae required his staff to add songs to a station’s playlist in

exchange for valuable items. According to one station employee, “[McCrae] seemed less concerned about the appropriateness of those records with the radio station then [sic] with the promotion or whatever was attached to it.” In one instance, McCrae insisted that WZNE add a song from the Universal Records band RazorLight because “there was a huge deal on the table and he needed to purchase Bruce Springsteen tickets.” Seemingly, the label agreed to make funds available to enable McCrae to purchase Bruce Springsteen tickets for himself, because once the RazorLight song was added to the playlist, the employee received a call from a label representative, thanking him for the add, and advising him that \$1,400 had been made available on the label representative’s corporate credit card.

28. McCrae also advised employees that they needed to make certain adds to allow for the purchase of Buffalo Bills tickets, Yankees tickets, Red Sox tickets, Best Buy gift certificates or various concert tickets. None of the items secured for these adds were ever used for station promotions. Frequently, envelopes containing Best Buy gift certificates were sent to McCrae’s attention at the radio station although no promotion existed in which the station was giving away any gift certificates.

29. In addition, McCrae actively sought funds from independent promoters like JMA, which had a financial relationship with several CBS Radio stations (described in greater detail in ¶¶ 42 – 49 below). At times, JMA would provide McCrae with a list of dollar amounts available to a station if particular songs were added to the playlist. When JMA provided McCrae with such a list for August 30, 2004, McCrae inquired whether there is “anything additional out there” that the station could obtain for the adds. [Platzer to McClusky of 8/31/04]. One employee testified that sometimes in his conversations with McCrae on Tuesday (add day) the employee would learn that additional promotional expenses were available for adding a specific

song and that they needed to add it to get Yankees or Red Sox tickets. Yet, the employee noted, none of the items were ever used for on-air give-aways.

30. In December 2003, McCrae asked JMA to arrange a ski trip to Jackson Hole, Wyoming for him and his family. JMA arranged for two record labels to cover the cost of the trip. And, in late September, 2004, McCrae asked an employee to acquire airfare and hotel accommodations from a record label so that he could attend a friend's birthday party in Chicago.

31. CBS Radio terminated McCrae in November 2004 after learning of these practices, and the Rochester stations instituted a new policy requiring their program directors to submit adds to a general manager.

B. Pay-for-Play at Certain CBS Radio Stations

32. From 1999 through 2003, CBS Radio employees at WPXY, WZNE and WCMF frequently traded airplay for promotional benefits as part of the business plan of those stations. Programming personnel – and in particular, the music director for both WPXY and WZNE – were asked to keep station management abreast of the promotions or money being garnered, and to trade playlist adds for revenue.

33. Station employees from WPXY, WZNE and WCMF provided regular documentary reports, in the form of spreadsheets or memoranda, indicating what items of value they had brought to the station, and what adds had been traded for them. The materials received included promotional items, participation in station concerts and payment of invoices. For example, on July 17, 2001, a WZNE employee circulated a memo to the general manager and program director listing “what we’ve added . . . & a summary of our returns from the record labels.” [INFINITY 6596]

34. These memoranda make clear that the items of value provided by the labels often

had no connection to the artists ostensibly being promoted, and were nothing more than payments for airplay. Thus, numerous songs by certain artists were added in exchange for contest giveaways for performances by other artists. On April 10, 2001, for example, WZNE added a record by Eve 6 in exchange for tickets and plane fare to see the Dave Matthews Band in New Mexico.

35. In some instances, the CBS Radio stations accepted promotional benefits for songs that they would not otherwise have placed on their playlist. On June 16, 2003, WPXY added "Shut Up" by Nick Lachey and "You Are My #1" by Smash Mouth in exchange for "flyaways" – airplane trips to be used for contest prizes. [INFINITY 6056]. The program director has acknowledged that he did not intend to add these songs before he procured these benefits for the station.

36. The Rochester stations generally failed to give any on-air notice that the label had paid value to secure the airplay. Indeed, there was no process in place to insure that any such notice was provided.

37. Also during the period between 1999 and 2003, the music director for WPXY and WZNE, sold blocks of advertising time to labels for the purpose of playing sufficient portions of their songs to impact those songs' chart positions. Because the monitoring services, BDS and Mediabase, detect these spins the same way as spins that have not been purchased, the paid spins become part of the data used by Billboard and Radio & Records to compile the record charts. Labels purchase spin programs to generate additional spin detections each week, to vie for higher chart position and to maintain a record's current position if it begins to show signs of weakness on the charts. WPXY and WZNE would sell 90-second spots in which the detectable segments of a label's song would be played during overnight hours to assist the labels in

propelling their songs up the charts. When labels requested additional airplay and the stations were unable to provide it during regular programming, the labels were offered the opportunity to purchase spin programs. CBS Radio stations recorded such sales as “advertising” contracts. [INFINITY 373].

38. In July 2003, a newly-appointed station manager learned that the stations were ostensibly selling airplay by adding songs in exchange for promotional support. The station manager suspended the music director for one week. Record company emails, however, reflect that label employees continued to discuss quid pro quo arrangements with these stations. One Epic Records email lists a proposed \$1000 expense for a proposed “flyaway” in exchange for a Good Charlotte add then under consideration by WPXY. [SONY 65591] Similarly, WPXY continued to offer its “spin program”; another post-suspension email reflects the purchase of 14 slots in a WPXY spin program for the band Fuel. [SONY 65602]

39. In 2003, CBS Radio hired a separate music director for WZNE . The new music director also traded promotional items for airplay, without any apparent effort by his supervisors to inquire into, or put a stop to, the practice. He did not provide notice of the benefits received by the station, and was aware of no mechanism for providing such notice. According to the music director, he ceased making such exchanges in 2004 as a result of his own research regarding the payola laws.

40. The effort made to restrict these improper transactions was undermined by two factors. First, these CBS Radio stations continued to maintain a relationship with JMA, the independent promoter, which served as a conduit for airplay payments. Second, McCrae began to insert himself into programming decisions, and exchanged that influence for personal benefits from record labels.

C. JMA: A Conduit for Labels' Payments to CBS Radio Stations for Airplay

41. As noted in paragraph 29 above, JMA and other independent promotion operations, have had financial relationships with both radio stations and records labels, whereby the independent promoters (or "indies") would provide radio conglomerates or individual stations with annual budgets. The labels developed pay scales and compensated the indies for securing adds of their music on those stations. Generally, independent promoters received compensation from a record label (often referred to as an add fee) each time one of the indies' client stations added a song of that label to the station's playlist. The add fee received and additional promotional support supplied by the labels, would be funneled through such indies to the stations with the explicit understanding that the future level of support would depend on the stations adding particular songs. A minimum number of spins at monitored stations was required before the indies would receive payment.

42. In 2000, after experimenting with other independent promoters, the CBS Radio Rochester stations entered into separate agreements with JMA for independent promotion services. Under these agreements, which designated JMA as the stations' "exclusive independent music promotional representative," JMA provided each of the stations with an annual budget that the station could spend as it chose.

43. In exchange for receiving an annual budget, JMA was to receive "first access to information regarding all new record titles added to your Station's playlist." [Letter from JMA to MacKenzie, Nov. 14, 2000]. In practice, this meant that JMA could claim from the labels the payments they offered for particular adds whether or not JMA actually had an arrangement with the label to promote the song.

44. The budget JMA provided was adjusted annually based on an estimate of the number of records that the stations were expected to add the following year. The stations were aware that the amount of money they would receive from JMA the following year was based on the rate at which they added the records JMA suggested. In 2003, for example, JMA offered to spend \$54,000 per year at WCMF, an amount that was “based on an add pace of 3 per week @ \$600 per add.” [Davis to McClusky 11/26/02].

45. Ostensibly, the budget provided by JMA was to be spent on “promotional” items. In practice, it was used for any expenses the station wished to cover. Thus, WPXY’s budget was used to purchase a sound system, plane tickets to various record conventions, and car service and concert tickets for station employees. JMA also purchased gift cards, which the stations claimed they would use for contest prizes – although neither JMA nor the station took any steps to insure that the gift cards would actually be provided to listeners.

46. JMA also provided the stations with “billbacks” – promotional dollars – that were made available by the labels but were delivered by JMA for adding specific songs. The billbacks provided to stations were in addition to add fees and other promotional support. A label might provide billback dollars as an additional bonus for adding a song, or pursuant to a station’s request. [Email from Platzer to Minder 7/13/2004; Email from Platzer to McCrae 8/17/2004; Email from McCrae to Platzer 8/24/2004]

47. The CBS Radio stations were often made aware of the amount of billbacks that accompanied particular songs, i.e., money that the station could use for its general promotional budget in any way it saw fit. On May 22, 2001, WZNE received a billback of \$2500 for a Godsmack add. Billback transactions were virtually indistinguishable from the direct purchase

of airplay for cash. Thus, a June 29, 2004 email from a JMA representative to McCrae provided a list of preferences for WZNE's playlist:

G-Love - . . . Audience wants them. Universal can do an \$800 billback for the add this week.

Letter Kills - [Island Def Jam] can [sic] cover a \$300 invoice. Some TS you need? Something else in the billpark [sic] of \$300? Send the invoice and it's done.

Future Leaders - Epic can come to the table with \$500. Keane - They've got a no billbacks policy, so nothing there. Jet - Atlantic can put a \$200 billback on the table.

48. As a matter of policy, JMA generally did not allow a station to spend billbacks until it had received payment from the labels. Thus, the stations were fully aware that their ability to pay specific costs from JMA's financing would depend on their willingness to add particular records to their playlist.

49. In 2003, former JMA employee Rick Cooper started his own promotional firm, which competed with JMA to pay the budgetary expenses of – and receive adds from – Rochester's CBS Radio stations. McCrae apportioned credit for adds between these two promoters, telling the promoters who could "call in" a particular add. [INFINITY 8069]. This process led JMA to lodge frequent complaints, in which it told the stations how much money was associated with each add. [INFINITY 8040]. By this process, McCrae was vested with the power to decide how much money these rival promoters could earn. Contrary to CBS Radio policy, McCrae used that power – inherent in the relationship created by the CBS Radio Rochester stations with JMA – to sell airplay for personal benefit as discussed above.

D. The Sale of Airplay Across Multiple Stations

50. In addition to the sale of airplay at the local level, certain CBS Radio stations pursued joint promotional activities that amounted to direct pledges of airplay by participating stations in exchange for certain promotional benefits.

51. For example, in October 2002, certain CBS Radio stations and SONY BMG reached agreement on a promotion for Celine Dion, under which winners received flights to Las Vegas to see Dion, and CBS Radio stations (including WRMM) would report her “Goodbyes” on their add lists. [SONY 46655]. Similarly, in 2003, Epic Records and participating CBS Radio stations embarked on a national promotion involving a Pearl Jam concert in Orlando; participating stations in New York included WRMM, WZNE and WCMF. [SONY 46883]

52. An internal Epic email indicated that Epic had an agreement with a CBS Radio operations manager to receive a specific number of spins at numerous CBS Radio stations – and complained that the stations were not living up to their “obligations.” [SONY 59798]. On March 7, 2003, two CBS Radio station program directors sent a memo to the other participating program directors, admonishing them to “live up to the spirit and letter of our partnership agreement.” In particular, the memo stated:

Though a specific number of spins was never quantified or committed to on your behalf, what was made clear to everyone prior to opting into the promotion was the need for support and airplay of either “Thumbing My Way” or “Get Right” on your stations. Our hopes are that 2-3 spins per day will generate the kind of response we’re looking for in regards to both the promotion and on the street at retail [INFINITY 6592].

Sony also called all participating stations to tell them “they have to STEP up the airplay.” [SONY 256369].

53. Three days later, Sony circulated new airplay numbers showing that the calls had their desired effect: “[T]he promotion [was] starting to heat up.” *Id.*

54. Similar explicit offers of airplay were made at the local level, in the guise of promotional agreements. Thus, in January 2002, Interscope Geffen Records agreed with WXRK to provide contest prizes, and that its band, Nine Inch Nails, would visit the station. In return, WXRK promised to play a track from the band’s album “no less than 1 time per day during the 2:00 pm - 6:00 pm airshift.” [UMGEF 004763].

55. Thus, certain CBS Radio stations used their airplay as a commodity to be traded to labels for promotional benefits in a manner contrary to federal and state law.

IV. Statutory Violations

56. The Attorney General alleges that, by engaging in the practices described above, CBS Radio has violated GBL § 349 and Executive Law § 63(12).

IT NOW APPEARS that CBS Radio Inc. is willing to enter into this Assurance of Discontinuance, without admitting the OAG's allegations herein in their totality. By entering into this Assurance, CBS Radio makes no admission of liability or violation of law, but acknowledges that certain of its employees engaged in wrong and improper conduct, as set forth in CBS Radio's Statement annexed hereto as "Exhibit A"; and that the OAG is willing to accept the terms of this Assurance of Discontinuance pursuant to Executive Law § 63(15) in lieu of commencing a civil action. This Assurance shall conclude any action the OAG could commence against CBS Radio arising from or relating to the subject matter of this Investigation: provided, however, that nothing contained in this Assurance shall be construed to cover any claims that may be brought by the OAG to enforce CBS Radio's obligations arising from or relating to the provisions contained in this Assurance.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between CBS Radio and the OAG that:

1. This Assurance of Discontinuance shall be binding upon and extend to CBS Radio, its

employees, directors, officers, principals, divisions, subsidiaries, joint ventures or representatives, or any other person or entity whose acts, practices or policies with respect to radio are directed or controlled by CBS Radio.

2. Within 90 days of the Effective Date of this Assurance, CBS Radio will contribute and cause the total amount of \$2 million to be delivered to the Rockefeller Philanthropy Advisors who will distribute these funds to New York State not-for-profit corporations, to inure to the benefit of the residents of the State of New York by funding programs aimed at music education and appreciation; and

3. CBS Radio will pay to the OAG the sum of \$50,000, to cover the costs of this investigation, by certified check made payable to the New York State Department of Law and forwarded to the following address: New York State Department of Law, Division of Public Advocacy, 120 Broadway, 25th Floor, New York, N.Y., Attn: Terryl Brown Clemons, Assistant Deputy Attorney General.

BUSINESS PRACTICES

4. Within 90 days of the effective date of this Assurance, CBS Radio shall implement the Business Practices as set forth in "Exhibit B" annexed hereto.

COOPERATION WITH THE ATTORNEY GENERAL

5. CBS Radio shall fully and promptly cooperate with the OAG with regard to its Investigation, and related proceedings and actions, of any person, corporation or entity, including but not limited to CBS Radio's current and former employees, concerning the music and broadcasting industries. CBS Radio shall use its best efforts to ensure that all of its officers, directors, employees,

and agents also fully and promptly cooperate with the OAG in its investigation and related proceedings and actions. Cooperation shall include without limitation: (1) production voluntarily and without service of subpoena any information and all documents or other tangible evidence reasonably requested by the OAG, and any compilations or summaries of information or data that the OAG reasonably requests be prepared; (2) without the necessity of a subpoena, having CBS Radio's officers, directors, employees and agents attend any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial or other proceedings); (3) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession relevant to all inquiries reasonably made by the OAG concerning any fraudulent or criminal conduct whatsoever about which it has any knowledge or information; and (4) in the event any document is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by CBS Radio indicating: (a) the type of document; (b) the date of the document; (c) the author and recipient of the document; (d) the general subject matter of the document; (e) the reason for withholding the document; and (f) the Bates number or range of the withheld document. The OAG may challenge such claim in any forum of its choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which have been described by CBS Radio, its officers, directors, employees, or agents. Nothing herein shall prevent CBS Radio from providing such evidence to other regulators, or as otherwise required by law.

6. CBS Radio shall comply fully with the terms of this Agreement. If CBS Radio violates the terms of ¶ 5 in any material respect, as determined solely by the OAG: (1) the OAG may pursue any action, criminal or civil, against any entity for any crime it has committed, as authorized by

law, without limitation; (2) as to any criminal prosecution brought by the OAG for violation of law committed within five years prior to the date of this Agreement, CBS Radio shall waive any claim that such prosecution is time barred on grounds of speedy trial or speedy arraignment or the statute of limitations.

MISCELLANEOUS

7. Nothing contained herein shall be construed as relieving CBS Radio of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of the Assurance be deemed permission to engage in any act or practice prohibited by such law, regulation or rule.

8. The acceptance of this Assurance of Discontinuance by the OAG shall not be deemed approval by the OAG of any of CBS Radio's business practices, and CBS Radio shall make no representation to the contrary.

9. This Assurance of Discontinuance is contingent on and relies on the truthfulness and accuracy of all representations made by CBS Radio herein and during this investigation.

10. Unless otherwise provided, all notices as required by this Assurance of Discontinuance shall be provided as follows:

Terryl Brown Clemons, Assistant Deputy Attorney General
New York State Attorney General's Office
Division of Public Advocacy
120 Broadway - 25th Floor
New York, New York 10271
tel. (212) 416-6155
fax. (212) 416-8068

11. In any application or in any such action, facsimile transmission of a copy of any

papers to current counsel for CBS Radio shall be good and sufficient service on CBS Radio unless CBS Radio designates, in writing to the OAG, another person to receive service by facsimile transmission.

12. Facsimile transmission of a copy of this Assurance to counsel for CBS Radio shall be good and sufficient service on CBS Radio.

13. This Assurance shall be governed by the laws of the State of New York without regard to conflict of laws principles.

14. This Assurance may be executed in counterparts.

RIGHTS OF CUSTOMERS

15. Noting contained in this Assurance of Discontinuance shall be construed to alter or enhance any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law. Nothing in this Assurance of Discontinuance shall in any way affect, restrict, or otherwise govern any rights of recourse CBS Radio may have or seek to assert against any third-party.

EFFECTIVE DATE

16. This Assurance of Discontinuance shall be effective on the date that it is signed by an authorized representative of the OAG's Office.

VIOLATION AS PRIMA FACIE PROOF OF LAW VIOLATION

17. Any violation of the terms of this Assurance of Discontinuance shall constitute *prima facie* evidence of violation of the applicable law in any civil action or proceeding thereafter commenced against CBS Radio by the OAG.

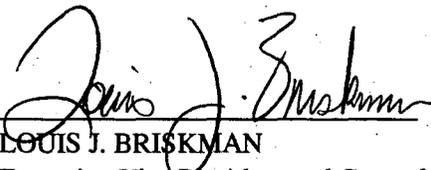
ENTIRE ASSURANCE OF DISCONTINUANCE

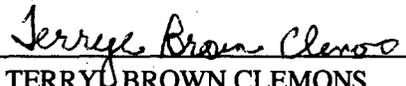
18. The terms stated herein constitute the entire terms of this Assurance of Discontinuance.

WHEREFORE, the following signatures are affixed hereto this 17 day of October, 2006.

CBS RADIO, INC.

ELIOT SPITZER,
ATTORNEY GENERAL
OF THE STATE OF NEW YORK

By: 
LOUIS J. BRISKMAN
Executive Vice President and General
Counsel, CBS Corporation

By: 
TERRY BROWN CLEMONS
Assistant Deputy Attorney General
Division of Public Advocacy