



DIVISION OF CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-0402



*DC*  
*No Act*  
*RE 12-31-02*

March 5, 2003

Kenneth E. Wyker  
Senior Vice President and General Counsel  
Clear Channel Communications, Inc.  
200 East Basse Road  
San Antonio, TX 78209-8328

*1934*  
*14A-8*  
*3/5/2003*

Re: Clear Channel Communications, Inc.  
Incoming letter dated December 31, 2002

Dear Mr. Wyker:

This is in response to your letter dated December 31, 2002 concerning the shareholder proposal submitted to Clear Channel by the AFL-CIO Reserve Fund. We also have received a letter from the proponent dated January 21, 2003. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

**PROCESSED**  
**MAR 14 2003**  
**THOMSON FINANCIAL**

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

*Martin P. Dunn*

Martin P. Dunn  
Deputy Director

Enclosures

cc: William Patterson  
Director, Office of Investment  
AFL-CIO Reserve Fund  
815 Sixteenth Street, N.W.  
Washington, DC 20006



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OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

REC'D S.E.C.  
DEC 31 2002  
1086

December 31, 2002

Via Hand Delivery

Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
450 Fifth Street, N.W.  
Washington, DC 20549

Re: Clear Channel Communications, Inc.  
Shareholder Proposal Submitted by the AFL-CIO Reserve Fund

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we hereby give notice that Clear Channel Communications, Inc., a Texas corporation (the "Company"), intends to omit from the proxy statement and form of proxy for the Company's 2003 annual meeting of shareholders (together, the "Proxy Materials") the proposal (the "Proposal") received by the Company from the AFL-CIO Reserve Fund on November 22, 2002. A copy of the Proposal and accompanying cover letter, dated November 21, 2002 (the "Cover Letter"), is attached hereto as Attachment A.

The Company requests the concurrence of the staff of the Division of Corporation Finance (the "Staff") that it will not recommend enforcement action if the Company omits the Proposal (including both the resolution and the supporting statement) from the Proxy Materials for the reasons set forth in this letter.

I. The Proposal

The Proposal states:

**Shareholder Resolution**

Resolved: The shareholders of Clear Channel Communications, Inc. (the "Company") urge the Board of Directors to amend the bylaws to require that an independent director who has not served as chief executive officer ("CEO") of the Company shall serve as chairman of the Board of Directors.

The supporting statement of the Proposal provides as follows:

### Supporting Statement

The primary purpose of the Board of Directors is to protect shareholders' interests by providing independent oversight of management, including the CEO. We believe that separating the roles of chairman and CEO will promote greater management accountability to shareholders and lead to a more objective evaluation of the CEO. In our opinion, an independent chairman will enhance investor confidence in our Company and strengthen the integrity of the Board of Directors.

Recent corporate scandals have focused attention on the issue of board independence and the need for an independent board chairman. According to the Wall Street Journal, "in a post-Enron world of tougher corporate-governance standards, the notion of a separate outside chairman is gaining boardroom support as a way to improve monitoring of management and relieve overworked CEOs" (*Splitting Posts of Chairman, CEO Catches on With Boards*, November 11, 2002).

Corporate governance experts have questioned how one person serving as both chairman and CEO can effectively monitor and evaluate his or her own performance. A blue-ribbon commission of the National Association of Corporate Directors recently observed that "it is difficult for us to see how an active CEO, already responsible for the operations of the corporation, can give the time necessary to accept primary responsibility for the operations of the board."

Many institutional investors have found that a strong, objective board leader can best provide the necessary oversight of management. For example, the corporate governance guidelines of the California Public Employees' Retirement System states that "the independence of a majority of the Board is not enough" and that "the leadership of the board must embrace independence, and it must ultimately change the way in which directors interact with management."

By setting agendas, priorities and procedures, the position of chairman is critical in shaping the work of the Board of Directors. Accordingly, we believe that having an independent director serve as chairman can help ensure the objective functioning of an effective board. Conversely, we fear that combining the positions of chairman and CEO may result in a passive and uninvolved board that rubber-stamps the CEO's own decisions.

For these reasons, we urge a vote FOR this resolution.

II. Reasons for Omission

The Company believes that it may omit the Proposal for each of the following reasons: (1) the Proposal, if implemented, would violate state law and therefore the Proposal may be excluded under Rule 14a-8(i)(2); (2) the Proposal is beyond the power or authority of the Company to implement and therefore the Proposal may be excluded under Rule 14a-8(i)(6); and (3) the Proposal relates to the Company's ordinary business operations and therefore the Proposal may be precluded under Rule 14a-8(i)(7). The reasons for our conclusions are more specifically described below.

A. The Proposal may be omitted pursuant to Rule 14a-8(i)(2) because, if implemented, it would violate Texas law.

The Proposal requests that the Board of Directors amend the Company's bylaws to require that an independent director not serving as the Company's chief executive officer serve as the Company's chairman of the board of directors. The Company and L. Lowry Mays are parties to an Employment Agreement, dated October 1, 1999 (the "Agreement"), a copy of which is attached hereto as Attachment B, pursuant to which the Company agreed to employ Mr. Mays as its chairman of the board and chief executive officer.

Under Rule 14a-8(i)(2), a shareholder proposal may be omitted by a corporation if its implementation would "violate any federal, state or foreign law to which it is subject." That a contract cannot be unilaterally terminated by a party thereto is a generally accepted rule of law. See Williston on Contracts §§ 63:62, 64:1, 66:1, 67:102 and annotations (4th ed. 2002). Additionally, the unilateral modification of a contract constitutes a breach, which is "a failure, without legal excuse, to perform any promise which forms the whole or part of a contract," Williston on Contracts at § 63:1 (4th ed. 2002).

Pursuant to Texas law, which governs the Agreement, the repudiation of a contract is a breach of the contract and subjects the repudiating party to immediate liability for that breach. See Group Life and Health Ins Co. v. Turner, 620 S.W.2d 670, 673 (Tex. Civ. App.—Dallas 1981, no writ); Murray v. Crest Construction, Inc., 900 S.W.2d 342, 344 (Tex. 1995). Implementation of the Proposal would require the Board of Directors to remove Mr. Mays from his position as chairman of the board. As a result thereof, the Company will have repudiated the Agreement resulting in its breach of its obligation to employ Mr. Mays as the Company's chairman of the board under the Agreement.

The Staff has long recognized that corporations may exclude proposals under Rule 14a-8(i)(2) that would cause the corporation to breach existing contractual obligations. For example, LESCO, Inc. received a very similar proposal requesting that the company "separate the current roles of Chief Executive Officer and President from Chairman of the Board and designate a non-executive and independent director as Chairman of the Board of Directors." The Staff agreed with the LESCO position that the proposal was

excludable pursuant to Rule 14a-8(i)(2) (and Rule 14a-8(i)(6)) because "it may cause LESCO to breach its existing employment agreement" with LESCO's chairman and chief executive officer. LESCO, Inc. (Apr. 2, 2001). See also Liz Claiborne, Inc. (March 18, 2002) (allowing exclusion of proposal seeking shareholder approval for executive officer pay agreements under Rules 14-8(i)(2) and 14a-8(i)(6) because "it may cause Liz Claiborne to breach its existing severance agreements."); Duke Energy Corp. (Jan. 16, 2002) (same); Goldfield Corp. (March 28, 2001) (same); International Business Machines Corporation (Feb. 27, 2000) (allowing exclusion of proposal requesting that IBM seek termination and renegotiation of retirement package entered into with its chief executive officer under Rule 14a-8(i)(2)); Galaxy Nutritional Foods Company (Oct. 12, 1999) (allowing exclusion of proposal requesting that the corporation not extend a promissory note to the corporation's chief executive officer under Rule 14a-8(i)(2) and Rule 14a-8(i)(6)).

Accordingly, the Proposal may properly be omitted from the Proxy Materials pursuant to Rule 14a-8(i)(2), because if implemented, the Company would be required to breach an existing agreement in violation of Texas law, which would in turn subject the Company to liability for damages. We have included the opinion of Texas counsel in support of this position as Attachment C.

B. The Proposal may be excluded under Rule 14a-8(i)(6) because the Company would lack the power or authority to implement it.

Under Rule 14a-8(i)(6), a proposal may be excluded "if the company would lack the power or authority to implement the proposal." Implementation of the Proposal would require the Company to unilaterally modify the Agreement by removing Mr. Mays from his position as chairman of the board. Such modification is not permitted by the Agreement, and Texas law does not permit a party to an existing contract to unilaterally modify the contract. Guardian Trust Co. v. R.J. Bauereisen, 121 S.W.2d 579, 583 (Tex. 1938); Hill v. Heritage Resources, Inc., 964 S.W.2d 89, 113 (Tex. App.—El Paso 1997, pet. denied). Therefore, the Company would not have the power or authority to implement the Proposal even if such Proposal were to be approved by the Company's shareholders.

The Staff has consistently permitted the exclusion of proposals that seek to have corporations perform tasks that they do not have the contractual authority to perform. See Liz Claiborne (March 18, 2002) (permitting exclusion under Rule 14a-8(i)(6) where the proposal would cause the corporation to breach existing severance agreements); LESCO, Inc. (April 2, 2001) (permitting exclusion of proposal to separate the role of Chairman of the Board and Chief Executive Officer pursuant to Rule 14a-8(i)(6)); Duke Energy Corp. (January 16, 2002) (permitting exclusion of proposal for shareholder approval of all executive officer severance pay agreements); Putnam High Income Convertible and Bond Fund (April 6, 2001) (allowing a corporation to omit a proposal that unilaterally required the reduction of contractual advisor fees); Whitman Corporation

(Feb. 15, 2000) (permitting exclusion of proposal to cancel a previously approved merger agreement); Galaxy Nutritional Foods Company (October 12, 1999) (allowing omission of a proposal not to extend an executive's promissory note, breaching his employment agreement).

Because the Company does not have the power or authority to implement the Proposal, the Proposal may be omitted under Rule 14a-8(i)(6).

C. The Proposal may be excluded under Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

Rule 14a-8(i)(7) permits the omission of a shareholder proposal if the proposal relates to the conduct of a "company's ordinary business operations." The Proposal seeks the termination of Mr. Mays as either the Chairman of the Board or Chief Executive Officer of the Company. The Staff has concluded that proposals relating to the dismissal, termination or hiring of executive officers may be properly omitted pursuant to Rule 14a-8(i)(7) because such proposals related to a corporation's ordinary business operations. See The Walt Disney Company (Dec. 16, 2002) (allowing exclusion of a proposal to terminate the corporation's chairman and chief executive officer pursuant to Rule 14a-8(i)(7)); Wachovia Corporation (February 17, 2002); Spartan Motors, Inc. (March 13, 2001). Because the Proposal relates to the conduct of the Company's ordinary business operations, in implicitly seeking the termination of Mr. Mays as the Company's chairman of the board, it may be properly excluded pursuant to Rule 14a-8(i)(7).

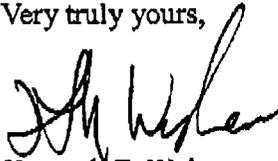
III. Conclusion

The Company requests the concurrence of the Staff that it will not recommend enforcement action if the Company omits the Proposal (including both the resolution and the supporting statement) from its Proxy Materials for the reasons set forth above.

By copy of this letter, the Company notifies the AFL-CIO Reserve Fund of its intention to omit the Proposal (including the resolution and supporting statement) from its Proxy Materials. In accordance with Rule 14a-8(j) of the Exchange Act, we have enclosed six copies of this letter and the attachments to this letter. Please acknowledge receipt of the enclosed materials by date-stamping the enclosed receipt copy of this letter and returning it in the enclosed return envelope. If the Staff believes that it will not be able to take the no-action position requested above, we would appreciate the opportunity to confer with the Staff prior to the issuance of a negative response. Please feel free to call the undersigned at (210) 832-3321 with any questions or comments regarding the foregoing.

Securities and Exchange Commission  
December 31, 2002  
Page 6

Very truly yours,



Kenneth E. Wyker  
Senior Vice President and General Counsel

Attachments

cc: Mr. Bill Patterson (w/attachments)  
Mr. Brandon Rees (w/attachments)

**Attachment A**

# American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 637-5000  
<http://www.afcio.org>

## EXECUTIVE COUNCIL

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November 21, 2002

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CLEAR CHANNEL  
LEGAL

*By Facsimile and UPS Next Day Air*

Kenneth E. Wyker  
Corporate Secretary  
Clear Channel Communications, Inc.  
200 E. Basse Road  
San Antonio, TX 78209

Dear Mr. Wyker:

On behalf of the AFL-CIO Reserve Fund (the "Fund"), I write to give notice that pursuant to the 2002 proxy statement of Clear Channel Communications, Inc. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2003 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting. The Fund is the beneficial owner of 400 shares of voting common stock (the "Shares") of the Company, and has held the Shares for over one year. In addition, the Fund intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Brandon Rees at (202) 637-3900.

Sincerely,

Bill Patterson  
Director, Office of Investment

Enclosure

## Shareholder Resolution

Resolved: The shareholders of Clear Channel Communications, Inc. (the "Company") urge the Board of Directors to amend the bylaws to require that an independent director who has not served as chief executive officer ("CEO") of the Company shall serve as chairman of the Board of Directors.

## Supporting Statement

The primary purpose of the Board of Directors is to protect shareholders' interests by providing independent oversight of management, including the CEO. We believe that separating the roles of chairman and CEO will promote greater management accountability to shareholders and lead to a more objective evaluation of the CEO. In our opinion, an independent chairman will enhance investor confidence in our Company and strengthen the integrity of the Board of Directors.

Recent corporate scandals have focused attention on the issue of board independence and the need for an independent board chairman. According to the Wall Street Journal, "in a post-Enron world of tougher corporate-governance standards, the notion of a separate outside chairman is gaining boardroom support as a way to improve monitoring of management and relieve overworked CEOs" (*Splitting Posts of Chairman, CEO Catches on With Boards*, November 11, 2002).

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By setting agendas, priorities and procedures, the position of chairman is critical in shaping the work of the Board of Directors. Accordingly, we believe that having an independent director serve as chairman can help ensure the objective functioning of an effective board. Conversely, we fear that combining the positions of chairman and CEO may result in a passive and uninvolved board that rubber-stamps the CEO's own decisions.

For these reasons, we urge a vote FOR this resolution.

**Attachment B**

EXHIBIT 10.1

EMPLOYMENT AGREEMENT

AGREEMENT, dated as of October 1, 1999, by and between Clear Channel Communications, Inc., a Texas corporation (the Company), and L. Lowry Mays (Executive).

IN CONSIDERATION of the premises and the mutual covenants set forth below, the parties hereby agree as follows:

1. Employment. The Company hereby agrees to continue to employ Executive as the Chairman and Chief Executive Officer of the Company, and Executive hereby accepts such continued employment, on the terms and conditions hereinafter set forth.

2. Term. The period of employment of Executive by the Company under this Agreement (the Employment Period) shall commence on October 1, 1999 (the Commencement Date) and shall continue through the seventh anniversary thereof; provided, that, the Employment Period shall automatically be extended for one (1) additional day each day during the Employment Period unless either party gives written notice not to extend this Agreement. The Employment Period may be sooner terminated by either party in accordance with Section 6 of this Agreement.

3. Position and Duties. During the Employment Period, Executive shall serve as Chairman and Chief Executive Officer of the Company, and shall report solely and directly to the Companys Board of Directors of the Company (the Board). Executive shall have those powers and duties normally associated with the position of Chairman and Chief Executive Officer of entities comparable to the Company and such other powers and duties as may be prescribed by the Board; provided that, such other powers and duties are consistent with Executives position as Chairman and Chief Executive Officer. Executive shall devote as much of his working time, attention and energies during normal business hours (other than absences due to illness or vacation) to satisfactorily perform his duties for the Company. Notwithstanding the above, Executive shall be permitted, to the extent such activities do not substantially interfere with the performance by Executive of his duties and responsibilities hereunder to (i) manage Executives personal, financial and legal affairs, (ii) to serve on civic or charitable boards or committees (it being expressly understood and agreed that Executives continuing to serve on any such board and/or committees on which Executive is serving, or with which Executive is otherwise associated, as of the Commencement Date shall be deemed not to interfere with the performance by Executive of his duties and responsibilities under this Agreement) and (iii) deliver lectures or fulfill speaking engagements. During the Employment Period, Executive shall also serve as a director of the Company.

4. Place of Performance. The principal place of employment of Executive shall be at the Companys principal executive offices in San Antonio, Texas.

5. Compensation and Related Matters.

(a) Base Salary and Bonus. During the Employment Period, the Company shall pay Executive a base salary at the rate of not less than \$1,000,000 per year (Base Salary). Executives Base Salary shall be paid in approximately equal installments in accordance with the Companys customary payroll practices. The Compensation Committee of the Board (the Committee) shall review Executives Base Salary for increase (but not decrease) no less frequently than annually and consistent with the compensation practices and guidelines of the Company. If Executives Base Salary is increased by the Company, such increased Base Salary shall then constitute the Base Salary for all purposes of this Agreement. In addition to Base Salary, Executive shall be paid an annual bonus (the Bonus) as provided for under the Performance Based Compensation Plan of the Company and any other annual incentive plan maintained by the Company or any successor plans thereto as determined by the Committee.

(b) Expenses. The Company shall promptly reimburse Executive for all reasonable business expenses upon the presentation of reasonably itemized statements of such expenses in accordance with the Companys policies and procedures now in force or as such policies and procedures may be modified with respect to all senior executive officers of the Company. In addition, during the Employment Period, Executive shall be entitled to, at the sole expense of the Company, the use of an automobile appropriate to his position and no less favorable than the automobile provided immediately prior to the date of this Agreement.

(c) Vacation. Executive shall be entitled to the number of weeks of paid vacation per year that he was eligible for immediately prior to the date of this Agreement, but in no event less than four (4) weeks annually. Unused vacation may be carried forward from year to year. In addition to vacation, Executive shall be entitled to the number of sick days and personal days per year that other senior executive officers of the Company with similar tenor are entitled under the Companys policies.

(d) Services Furnished. During the Employment Period, the Company shall furnish Executive, with office space, stenographic and secretarial assistance and such other facilities and services no less favorable than those that he was receiving immediately prior to the date of this Agreement or, if better, as provided to other senior executive officers of the Company.

(e) Welfare, Pension and Incentive Benefit Plans. During the Employment Period, Executive (and his spouse and dependents to the extent provided therein) shall be entitled to participate in and be covered under all the welfare benefit plans or programs maintained by the Company from time to time for the benefit of its senior executives including, without limitation, all medical, hospitalization, dental, disability, accidental death and dismemberment and travel accident insurance plans and programs. The Company shall at all times provide to Executive (and his spouse and dependents to the extent provided under the applicable plans or programs) (subject to modifications affecting all senior executive officers) the same type and levels of participation and benefits as are being provided to other senior executives (and their spouses and dependents to the extent provided under the applicable plans or programs) on the Commencement Date. In addition, during the Employment Period, Executive shall be eligible to participate in all pension, retirement, savings and other employee benefit plans and programs maintained from time to time by the Company for the benefit of its senior executives.

(f) Stock Options.

(i) During each calendar year of the Employment Period occurring after December 31, 1999, the Committee shall cause the Company to grant Executive a stock option to acquire at least 100,000 shares of the Companys common stock (each, an Option and collectively the Options) at such time(s) as the Company has historically granted stock options to its senior executive officers during the year; provided, that, such grants shall be made by at least December 31 of each calendar year occurring after December 31, 1999. Notwithstanding the

foregoing, unless otherwise waived by Executive in his sole discretion, Executive shall receive no less than the number of Options granted during any prior year of employment. In addition, to the extent necessary to carry out the intended terms of this paragraph (f)(i), such number of options shall be adjusted as is necessary to take into account any change in the common stock of the Company in a manner consistent with adjustments made to other option holders of the Company.

(ii) All Options described in paragraph (i) above shall be granted subject to the following terms and conditions: (A) except as provided below, the Options shall be granted under and subject to the Companys stock option plan; (B) the exercise price per share of each Option shall be equal to the last reported sale price of the Companys common stock on the New York Stock Exchange (or such other principal trading market for the Companys common stock) at the close of the trading day immediately preceding the date as of which the grant is made; (C) each Option shall be vested and exercisable as determined by the Committee; (D) each Option shall be exercisable for the ten (10) year period following the date of grant whether or not Executive is then employed; and (E) each Option shall be evidenced by, and subject to, a stock option agreement whose terms and conditions are consistent with the terms hereof.

6. Termination. Executives employment hereunder may be terminated during the Employment Period under the following circumstances:

(a) Death. Executives employment hereunder shall terminate upon his death.

(b) Disability. If, as a result of Executives incapacity due to physical or mental illness, Executive shall have been substantially unable to perform his duties hereunder for an entire period of six (6) consecutive months, and within thirty (30) days after written Notice of Termination is given after such six (6) month period, Executive shall not have returned to the substantial performance of his duties on a full-time basis, the Company shall have the right to terminate Executives employment hereunder for Disability, and such termination in and of itself shall not be, nor shall it be deemed to be, a breach of this Agreement.

(c) Cause. The Company shall have the right to terminate Executives employment for Cause, and such termination in and of itself shall not be, nor shall it be deemed to be, a breach of this Agreement. For purposes of this Agreement, the Company shall have Cause to terminate Executives employment upon Executives:

(i) final conviction of a felony involving moral turpitude; or

(ii) willful misconduct that is materially and demonstrably injurious economically to the Company.

For purposes of this Section 6(c), no act, or failure to act, by Executive shall be considered willful unless committed in bad faith and without a reasonable belief that the act or omission was in the best interests of the Company or any entity in control of, controlled by or under common control with the Company (Affiliates) thereof. Cause shall not exist under paragraph (ii) unless and until the Company has delivered to Executive a copy of a resolution duly adopted by three-quarters of the Board (excluding Executive) at a meeting of the Board called and held for such purpose (after reasonable (but in no event less than thirty (30) days) notice to Executive and an opportunity for Executive, together with his counsel, to be heard before the Board), finding that in the good faith opinion of the Board, Executive was guilty of the conduct set forth in paragraph (ii) and specifying the particulars thereof in detail. This Section 6(c) shall not prevent Executive from challenging in any arbitration or court of competent jurisdiction the Boards determination that Cause exists or that Executive has failed to cure any act (or failure to act) that purportedly formed the basis for the Boards determination.

(d) Good Reason. Executive may terminate his employment for Good Reason anytime after Executive has actual knowledge of the occurrence, without the written consent of Executive, of one of the following events:

(i) (A) any change in the duties or responsibilities (including reporting

responsibilities) of Executive that is inconsistent in any adverse respect with Executives position(s), duties, responsibilities or status with the Company immediately prior to such change (including any diminution of such duties or responsibilities) or (B) an adverse change in Executives titles or offices (including, membership on the Board) with the Company;

(ii) a reduction in Executives Base Salary or Bonus opportunity;

(iii) (A) any requirement that Executive travel on Company business to an extent substantially greater than the travel obligations of Executive immediately prior to the date of this Agreement or (B) the relocation of the Companys principal executive offices or Executives own office location to a location more than fifteen (15) miles from their location immediately prior to the date hereof;

(iv) the failure of the Company or any Affiliate to continue in effect any material employee benefit plan, compensation plan, welfare benefit plan or fringe benefit plan in which Executive is participating immediately prior to the date of this Agreement or the taking of any action by the Company or any Affiliate which would adversely affect Executives participation in or reduce Executives benefits under any such plan, unless Executive is permitted to participate in other plans providing Executive with substantially equivalent benefits;

(v) any refusal by the Company or any Affiliate to continue to permit Executive to engage in activities not directly related to the business of the Company which Executive was permitted to engage in prior to the date of this Agreement;

(vi) any purported termination of Executives employment for Cause which is not effected pursuant to the procedures of Section 6(c) (and for purposes of this Agreement, no such purported termination shall be effective);

(vii) the Companys or any Affiliates failure to provide in all material respects the indemnification set forth in Section 11 of this Agreement;

(viii) a Change in Control of the Company; provided, that, the transaction contemplated by the Company and AMFM, Inc. shall not be deemed to be a Change in Control for purposes of this clause (viii);

(ix) the failure of the Company to obtain the assumption agreement from any successor as contemplated in Section 13(a);

(x) the Company or any Affiliate providing Executive the notice not to renew the Employment Period as contemplated by Section 2 hereof;

(xi) any other breach of a material provision of this Agreement by the Company or any Affiliate.

For purposes of clauses (i) through (vii) and (xi) above, an isolated, insubstantial and inadvertent action taken in good faith and which is remedied by the Company within ten (10) days after receipt of notice thereof given by Executive shall not constitute Good Reason. Executives right to terminate employment for Good Reason shall not be affected by Executives incapacity due to mental or physical illness and Executives continued employment shall not constitute consent to, or a waiver of rights with respect to, any event or condition constituting Good Reason.

(e) Without Cause. The Company shall have the right to terminate Executives employment hereunder without Cause by providing Executive with a Notice of Termination at least thirty (30) days prior to such termination, and such termination shall not in and of itself be, nor shall it be deemed to be, a breach of this Agreement.

(f) Without Good Reason. Executive shall have the right to terminate his employment hereunder without Good Reason by providing the Company with a Notice of Termination at least thirty (30) days prior to such termination, and such termination shall not in and of itself be, nor shall it be deemed to be, a

breach of this Agreement.

For purposes of this Agreement, a Change in Control of the Company means the occurrence of one of the following events:

(1) individuals who, on the Commencement Date, constitute the Board (the Incumbent Directors) cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the Commencement Date whose election or nomination for election was approved by a vote of at least two-thirds of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for director, without objection to such nomination) shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to directors or as a result of any other actual or threatened solicitation of proxies by or on behalf of any person other than the Board shall be an Incumbent Director;

(2) any person (as such term is defined in Section 3(a)(9) of the Securities Exchange Act of 1934 (the Exchange Act) and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act) is or becomes, after the Commencement Date, a beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 20% or more of the combined voting power of the Company's then outstanding securities eligible to vote for the election of the Board (the Company Voting Securities); provided, however, that an event described in this paragraph (2) shall not be deemed to be a Change in Control if any of the following becomes such a beneficial owner: (A) the Company or any majority-owned subsidiary (provided, that this exclusion applies solely to the ownership levels of the Company or the majority-owned subsidiary), (B) any tax-qualified, broad-based employee benefit plan sponsored or maintained by the Company or any majority-owned subsidiary, (C) any underwriter temporarily holding securities pursuant to an offering of such securities, (D) any person pursuant to a Non-Qualifying Transaction (as defined in paragraph (3)), or (E) Executive or any group of persons including Executive (or any entity controlled by Executive or any group of persons including Executive).

(3) the approval by the shareholders of the Company of a merger, consolidation, share exchange or similar form of transaction involving the Company or any of its subsidiaries, or the sale of all or substantially all of the Company's assets (a Business Transaction), unless immediately following such Business Transaction (i) more than 65% of the total voting power of the entity resulting from such Business Transaction or the entity acquiring the Company's assets in such Business Transaction (the Surviving Corporation) is beneficially owned, directly or indirectly, by the Company's shareholders immediately prior to any such Business Transaction, and (ii) no person (other than the persons set forth in clauses (A), (B), or (C) of paragraph (2) above or any tax-qualified, broad-based employee benefit plan of the Surviving Corporation or its Affiliates) beneficially owns, directly or indirectly, 20% or more of the total voting power of the Surviving Corporation (a Non-Qualifying Transaction); or

(4) Board approval of a liquidation or dissolution of the Company, unless the voting common equity interests of an ongoing entity (other than a liquidating trust) are beneficially owned, directly or indirectly, by the Company's shareholders in substantially the same proportions as such shareholders owned the Company's outstanding voting common equity interests immediately prior to such liquidation and such ongoing entity assumes all existing obligations of the Company to Executive under this Agreement.

## 7. Termination Procedure.

(a) Notice of Termination. Any termination of Executive's employment by the Company or by Executive during the Employment Period (other than termination

pursuant to Section 6(a)) shall be communicated by written Notice of Termination to the other party hereto in accordance with Section 14. For purposes of this Agreement, a Notice of Termination shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executives employment under the provision so indicated.

(b) Date of Termination. Date of Termination shall mean (i) if Executives employment is terminated by his death, the date of his death, (ii) if Executives employment is terminated pursuant to Section 6(b), thirty (30) days after Notice of Termination (provided that Executive shall not have returned to the substantial performance of his duties on a full-time basis during such thirty (30) day period), and (iii) if Executives employment is terminated for any other reason, the date on which a Notice of Termination is given or any later date (within thirty (30) days after the giving of such notice) set forth in such Notice of Termination.

8. Compensation Upon Termination or During Disability. In the event Executive is disabled or his employment terminates during the Employment Period, the Company shall provide Executive with the payments and benefits set forth below. Executive acknowledges and agrees that the payments set forth in this Section 8 constitute liquidated damages for termination of his employment during the Employment Period.

(a) Termination By Company without Cause or By Executive for Good Reason. If Executives employment is terminated by the Company without Cause or by Executive for Good Reason:

(i) within five (5) days following such termination, the Company shall pay to Executive (A) his Base Salary, Bonus and accrued vacation pay through the Date of Termination, as soon as practicable following the Date of Termination, and (B) a lump-sum cash payment equal to seven (7) times (the Severance Multiple) the sum of Executives Base Salary and highest Bonus paid to Executive in the three year period preceding such termination (including, for this purpose, any and all bonuses paid to Executive prior to the date of this Agreement); provided, that, for purposes of this Section 8(a)(i), Executives Bonus shall be deemed to be no less than \$3,000,000; and

(ii) the Company shall maintain in full force and effect, for the continued benefit of Executive, his spouse and his dependents for a period of seven (7) years following the Date of Termination the medical, hospitalization, dental, and life insurance programs in which Executive, his spouse and his dependents were participating immediately prior to the Date of Termination at the level in effect and upon substantially the same terms and conditions (including without limitation contributions required by Executive for such benefits) as existed immediately prior to the Date of Termination; provided, that, if Executive, his spouse or his dependents cannot continue to participate in the Company programs providing such benefits, the Company shall arrange to provide Executive, his spouse and his dependents with the economic equivalent of such benefits which they otherwise would have been entitled to receive under such plans and programs (Continued Benefits), provided, that, such Continued Benefits shall terminate on the date or dates Executive receives equivalent coverage and benefits, without waiting period or pre-existing condition limitations, under the plans and programs of a subsequent employer (such coverage and benefits to be determined on a coverage-by-coverage or benefit-by-benefit, basis); and

(iii) the Company shall reimburse Executive pursuant to Section 5 for reasonable expenses incurred, but not paid prior to such termination of employment; and

(iv) Executive shall be entitled to any other rights, compensation and/or benefits as may be due to Executive in accordance with the terms and provisions of any agreements, plans or programs of the Company; and

(v) As of the Date of Termination, Executive shall be granted a stock option to acquire 1,000,000 shares of the Companys common stock (Termination Option) under the following conditions, (A) except as provided below, the Termination Option shall be granted under and subject to the Companys stock option plan; (B) the exercise price per share of the Termination Option shall be equal to the last reported sale price of the Companys common stock on the New York Stock Exchange (or such other principal trading market for the Companys common stock) at the close of the trading day immediately preceding the Date of Termination; (C) the Termination Option shall be 100% vested and exercisable on the date of grant; (D) the Termination Option shall be exercisable for the ten (10) year period following the Date of Termination whether or not Executive is still providing services to the Company; and (E) each Option shall be evidenced by, and subject to, a stock option agreement whose terms and conditions are consistent with the terms hereof. In addition, to the extent necessary to carry out the intended terms of this paragraph (a)(v), such number of Termination Options shall be adjusted as is necessary to take into account any change in the common stock of the Company in a manner consistent with adjustments made to other option holders of the Company. The Company shall take all action necessary such that the shares of common stock issuable upon exercise of the Termination Options (and all other shares of common stock held by Executive) are registered on Form S-4 or Form S-8 (or any successor or other appropriate forms).

(vi) Notwithstanding the terms or conditions of any stock option, stock appreciation right or similar agreements between the Company and Executive to the contrary, and for purposes thereof, such agreements shall be deemed to be amended in accordance with this Section 8(a)(vi) if need be as of the Date of Termination and neither the Company, the Board nor the Committee shall take or assert any position contrary to the foregoing, Executive shall vest, as of the Date of Termination, in all rights under such agreements (i.e., stock options that would otherwise vest after the Date of Termination) and thereafter shall be permitted to exercise any and all such rights until the end of the term of such awards (regardless of any termination of employment restrictions therein contained) and restricted stock held by Executive shall become immediately vested as of the Date of Termination; and

(vii) Executive shall be paid a lump sum payment equal to the amount of compensation or contributions (as the case may be) by the Company that Executive would have been entitled to receive (assuming he would have received the maximum amount payable or contributable under each plan or arrangement for any year) under any plan or arrangement he was then participating (or entitled to participate in) for a seven (7) year period following the Date of Termination; and

(viii) Any and all insurance benefits or policies for the benefit of Executive shall become the sole property of Executive and, to the extent applicable, all of the Companys rights therein (including repayment of premiums) shall be forfeited by the Company and, to the extent not already made, the Company shall make all contributions or payments required of such policies for the year of termination; and

(ix) Any amount payable under this Section 8(a) shall also include an additional cash payment which shall equal any and all federal, state and local taxes due upon the provision of any such benefits or payments thereunder (other than taxes due under the operation of Section 4999 of the Code which Section of the Code is addressed in Section 8(e) hereof and, if applicable, shall work in conjunction with this Section 8(a)(ix)), which shall be payable to Executive within five (5) business days following his Date of Termination and such additional payment shall be grossed-up for any additional taxes due thereon (and any taxes thereon, etc.) in a manner consistent with the manner set forth in Section 8(e) of this Agreement,

whether or not such Section 8(e) is applicable.

(b) Cause or By Executive Without Good Reason. If Executives employment is terminated by the Company for Cause or by Executive (other than for Good Reason):

(i) the Company shall pay Executive his Base Salary, Bonus and his accrued vacation pay through the Date of Termination, as soon as practicable following the Date of Termination; and

(ii) the Company shall reimburse Executive pursuant to Section 5 for reasonable expenses incurred, but not paid prior to such termination of employment; and

(iii) Executive shall be entitled to any other rights, compensation and/or benefits as may be due to Executive in accordance with the terms and provisions of any agreements, plans or programs of the Company.

(c) Disability. During any period that Executive fails to perform his duties hereunder as a result of incapacity due to physical or mental illness (Disability Period), Executive shall continue to receive his full Base Salary set forth in Section 5(a) until his employment is terminated pursuant to Section 6(b). In the event Executives employment is terminated for Disability pursuant to Section 6(b):

(i) the Company shall pay to Executive (A) his Base Salary, Bonus and accrued vacation pay through the Date of Termination, as soon as practicable following the Date of Termination, and (B) continued Base Salary (as provided for in Section 5(a)) and Continued Benefits for seven (7) years; and

(ii) the Company shall reimburse Executive pursuant to Section 5 for reasonable expenses incurred, but not paid prior to such termination of employment; and

(iii) Executive shall be entitled to any other rights, compensation and/or benefits as may be due to Executive in accordance with the terms and provisions of any agreements, plans or programs of the Company; and

(iv) Executive shall be paid the amount of compensation or contributions (as the case may be) by the Company that Executive would have been entitled to receive (assuming he would have received the maximum amount payable or contributable under each plan or arrangement for any year) under any plan or arrangement he was then participating (or entitled to participate in) for a seven (7) year period following the Date of Termination.

(d) Death. If Executives employment is terminated by his death:

(i) the Company shall pay in a lump sum to Executives beneficiary, legal representatives or estate, as the case may be, Executives Base Salary, Bonus and accrued vacation pay through the Date of Termination and \$3,750,000 (which may be paid through insurance) and shall provide Executives spouse and dependents with Continued Benefits for seven (7) year; and

(ii) the Company shall reimburse Executives beneficiary, legal representatives, or estate, as the case may be, pursuant to Section 5 for reasonable expenses incurred, but not paid prior to such termination of employment; and

(iii) Executives beneficiary, legal representatives or estate, as the case may be, shall be entitled to any other rights, compensation and benefits as may be due to any such persons or estate in accordance with the terms and provisions of any agreements, plans or programs of the Company; and

(iv) Executives beneficiary, legal representatives or estate, as the case may be shall be paid the amount of compensation or contributions (as the case may be) by the Company that Executive would have been entitled to receive (assuming he would have received the maximum amount payable or contributable under each plan or arrangement for any year) under any plan or arrangement he was then participating (or entitled to participate in) for a seven (7) year period following the Date of Termination.

(e) Additional Payments. (i) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment, award, benefit or distribution (or any acceleration of any payment, award, benefit or distribution) by the Company or any entity which effectuates a Change in Control (or other change in ownership) to or for the benefit of Executive (the Payments) would be subject to the excise tax imposed by Section 4999 of the Code, or any interest or penalties are incurred by Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the Excise Tax), then the Company shall pay to Executive an additional payment (a Gross-Up Payment) in an amount such that after payment by Executive of all taxes (including any Excise Tax) imposed upon the Gross-Up Payment, Executive retains an amount of the Gross-Up Payment equal to the sum of (x) the Excise Tax imposed upon the Payments and (y) the product of any deductions disallowed because of the inclusion of the Gross-Up Payment in Executives adjusted gross income and the highest applicable marginal rate of federal income taxation for the calendar year in which the Gross-Up Payment is to be made. For purposes of determining the amount of the Gross-Up Payment, Executive shall be deemed to (A) pay federal income taxes at the highest marginal rates of federal income taxes at the highest marginal rate of taxation for the calendar year in which the Gross-Up Payment is to be made, (B) pay applicable state and local income taxes at the highest marginal rate of taxation for the calendar year in which the Gross-Up Payment is to be made, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes and (C) have otherwise allowable deductions for federal income tax purposes at least equal to those which could be disallowed because of the inclusion of the Gross-Up Payment in Executives adjusted gross income.

(ii) Subject to the provisions of Section 8(e)(i), all determinations required to be made under this Section 8(e), including whether and when a Gross-Up Payment is required, the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determinations, shall be made by a nationally recognized public accounting firm that is selected by Executive (the Accounting Firm) which shall provide detailed supporting calculations both to the Company and Executive within fifteen (15) business days of the receipt of notice from the Company or Executive that there has been a Payment, or such earlier time as is requested by the Company or Executive (collectively, the Determination). All fees and expenses of the Accounting Firm shall be borne solely by the Company and the Company shall enter into any agreement requested by the Accounting Firm in connection with the performance of the services hereunder. The Gross-Up Payment under this Section 8(e) with respect to any Payments made to Executive shall be made no later than thirty (30) days following such Payment. If the Accounting Firm determines that no Excise Tax is payable by Executive, it shall furnish Executive with a written opinion to such effect, and to the effect that failure to report the Excise Tax, if any, on Executives applicable federal income tax return should not result in the imposition of a negligence or similar penalty.

(iii) As a result of the uncertainty in the application of Section 4999 of the Code at the time of the Determination, it is possible that Gross-Up Payments which will not have been made by the Company should have been made (Underpayment) or Gross-Up Payments are made by the Company which should not have been made (Overpayment), consistent with the calculations required to be made hereunder. In the event that Executive thereafter is required to make payment of any Excise Tax or additional Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) shall be promptly

paid by the Company to or for the benefit of Executive. In the event the amount of the Gross-Up Payment exceeds the amount necessary to reimburse Executive for his Excise Tax, the Accounting Firm shall determine the amount of the Overpayment that has been made and any such Overpayment (together with interest at the rate provided in Section 1274(b)(2) of the Code) shall be promptly paid by Executive (to the extent he has received a refund if the applicable Excise Tax has been paid to the Internal Revenue Service) to or for the benefit of the Company. Executive shall cooperate, to the extent his expenses are reimbursed by the Company, with any reasonable requests by the Company in connection with any contest or disputes with the Internal Revenue Service in connection with the Excise Tax.

9. Mitigation. Executive shall not be required to mitigate amounts payable under this Agreement by seeking other employment or otherwise, and there shall be no offset against amounts due Executive under this Agreement on account of subsequent employment except as specifically provided herein. Additionally, amounts owed to Executive under this Agreement shall not be offset by any claims the Company may have against Executive and the Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder, shall not be affected by any other circumstances, including, without limitation, any counterclaim, recoupment, defense or other right which the Company may have against Executive or others.

#### 10. Restrictive Covenants.

(a) Confidential Information. Executive shall hold in a fiduciary capacity for the benefit of the Company all trade secrets and confidential information, knowledge or data relating to the Company and its businesses and investments, which shall have been obtained by Executive during Executive's employment by the Company and which is not generally available public knowledge (other than by acts by Executive in violation of this Agreement). Except as may be required or appropriate in connection with his carrying out his duties under this Agreement, Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or any legal process, or as is necessary in connection with any adversarial proceeding against the Company (in which case Executive shall use his reasonable best efforts in cooperating with the Company in obtaining a protective order against disclosure by a court of competent jurisdiction), communicate or divulge any such trade secrets, information, knowledge or data to anyone other than the Company and those designated by the Company or on behalf of the Company in the furtherance of its business or to perform duties hereunder.

(b) Non-Solicitation. Executive hereby agrees, in consideration of his employment hereunder and in view of the confidential position to be held by Executive hereunder, that after his termination of employment in which he is entitled to the benefits set forth in Section 8(a) hereof and through the second anniversary thereof, Executive shall not directly or indirectly induce any employee of the Company to terminate such employment or to become employed by any other radio broadcasting station.

(c) Non-Competition. Executive hereby agrees, in consideration of his employment hereunder and in view of the confidential position to be held by Executive hereunder, that after his termination of employment in which he is entitled to the benefits set forth in Section 8(a) hereof and through the second anniversary thereof, he shall not be employed by or perform activities on behalf of, or have an ownership interest in, any person, firm, corporation or other entity, or in connection with any business enterprise, that is directly or indirectly engaged in any of the radio, television, or related business activities in which the Company and its subsidiaries have significant involvement (other than direct or beneficial ownership of up to five percent (5%) of any entity whether or not in the same or competing business.

(e) Blue Pencil. The parties hereby acknowledge that the restrictions in this Section 10 have been specifically negotiated and agreed to by the parties hereto and are limited only to those restrictions necessary to protect the Company and its subsidiaries from unfair competition. The parties hereby agree that if the scope or enforceability of any provision,

paragraph or subparagraph of this Section 10 is in any way disputed at any time, and should a court find that such restrictions are overly broad, the court may modify and enforce the covenant to the extent that it believes to be reasonable under the circumstances. Each provision, paragraph and subparagraph of this Section 10 is separable from every other provision, paragraph, and subparagraph and constitutes a separate and distinct covenant. Executive acknowledges that the Company operates in major, medium and small sized markets throughout the United States and North America and that the effect of Section 10(c) may be to prevent him from working in a competitive business after his termination of employment hereunder.

(f) Remedies. Executive hereby expressly acknowledges that any breach or threatened breach by Executive of any of the terms set forth in Section 10 of this Agreement may result in significant and continuing injury to the Company, the monetary value of which would be impossible to establish. Therefore, Executive agrees that the Company shall be entitled to apply for injunctive relief in a court of appropriate jurisdiction.

#### 11. Indemnification.

(a) General. The Company agrees that if Executive is made a party or a threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative (a Proceeding), by reason of the fact that Executive is or was a trustee, director or officer of the Company or any subsidiary of the Company or is or was serving at the request of the Company or any subsidiary as a trustee, director, officer, member, employee or agent of another corporation or a partnership, joint venture, trust or other enterprise, including, without limitation, service with respect to employee benefit plans, whether or not the basis of such Proceeding is alleged action in an official capacity as a trustee, director, officer, member, employee or agent while serving as a trustee, director, officer, member, employee or agent, Executive shall be indemnified and held harmless by the Company to the fullest extent authorized by Texas law, as the same exists or may hereafter be amended, against all Expenses incurred or suffered by Executive in connection therewith, and such indemnification shall continue as to Executive even if Executive has ceased to be an officer, director, trustee or agent, or is no longer employed by the Company and shall inure to the benefit of his heirs, executors and administrators.

(b) Expenses. As used in this Agreement, the term Expenses shall include, without limitation, damages, losses, judgments, liabilities, fines, penalties, excise taxes, settlements, and costs, attorneys fees, accountants fees, and disbursements and costs of attachment or similar bonds, investigations, and any expenses of establishing a right to indemnification under this Agreement.

(c) Enforcement. If a claim or request under this Agreement is not paid by the Company or on its behalf, within thirty (30) days after a written claim or request has been received by the Company, Executive may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim or request and if successful in whole or in part, Executive shall be entitled to be paid also the expenses of prosecuting such suit. All obligations for indemnification hereunder shall be subject to, and paid in accordance with, applicable Texas law.

(d) Partial Indemnification. If Executive is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any Expenses, but not, however, for the total amount thereof, the Company, shall nevertheless indemnify Executive for the portion of such Expenses to which Executive is entitled.

(e) Advances of Expenses. Expenses incurred by Executive in connection with any Proceeding shall be paid by the Company in advance upon request of Executive that the Company pay such Expenses; but, only in the event that Executive shall have delivered in writing to the Company (i) an undertaking to reimburse the Company for Expenses with respect to which Executive is not entitled to indemnification and (ii) an affirmation of his good faith

belief that the standard of conduct necessary for indemnification by the Company has been met.

(f) Notice of Claim. Executive shall give to the Company notice of any claim made against him for which indemnification will or could be sought under this Agreement. In addition, Executive shall give the Company such information and cooperation as it may reasonably require and as shall be within Executives power and at such times and places as are convenient for Executive.

(g) Defense of Claim. With respect to any Proceeding as to which Executive notifies the Company of the commencement thereof:

(i) The Company will be entitled to participate therein at its own expense; and

(ii) Except as otherwise provided below, to the extent that it may wish, the Company will be entitled to assume the defense thereof, with counsel reasonably satisfactory to Executive, which in the Companys sole discretion may be regular counsel to the Company and may be counsel to other officers and directors of the Company or any subsidiary. Executive also shall have the right to employ his own counsel in such action, suit or proceeding if he reasonably concludes that failure to do so would involve a conflict of interest between the Company and Executive, and under such circumstances the fees and expenses of such counsel shall be at the expense of the Company.

(iii) The Company shall not be liable to indemnify Executive under this Agreement for any amounts paid in settlement of any action or claim effected without its written consent. The Company shall not settle any action or claim in any manner which would impose any penalty or limitation on Executive without Executives written consent. Neither the Company nor Executive will unreasonably withhold or delay their consent to any proposed settlement.

(h) Non-exclusivity. The right to indemnification and the payment of expenses incurred in defending a Proceeding in advance of its final disposition conferred in this Section 11 shall not be exclusive of any other right which Executive may have or hereafter may acquire under any statute, provision of the declaration of trust or certificate of incorporation or by-laws of the Company or any subsidiary, agreement, vote of shareholders or disinterested directors or trustees or otherwise.

12. Arbitration. Except as provided for in Section 10 of this Agreement, if any contest or dispute arises between the parties with respect to this Agreement, such contest or dispute shall be submitted to binding arbitration for resolution in San Antonio, Texas in accordance with the rules and procedures of the Employment Dispute Resolution Rules of the American Arbitration Association then in effect. The decision of the arbitrator shall be final and binding on both parties, and any court of competent jurisdiction may enter judgment upon the award. The Company shall pay all expenses relating to such arbitration, including, but not limited to, Executives legal fees and expenses, regardless of outcome.

### 13. Successors; Binding Agreement.

(a) Companys Successors. No rights or obligations of the Company under this Agreement may be assigned or transferred except that the Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, Company shall mean the Company as herein before defined and any successor to its business and/or assets (by merger, purchase or otherwise) which executes and delivers the agreement provided for in this Section 13 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law.

(b) Executives Successors. No rights or obligations of Executive under this Agreement may be assigned or transferred by Executive other than his rights to payments or benefits hereunder, which may be transferred only by will or the laws of descent and distribution. Upon Executives death, this Agreement and all rights of Executive hereunder shall inure to the benefit of and be enforceable by Executives beneficiary or beneficiaries, personal or legal representatives, or estate, to the extent any such person succeeds to Executives interests under this Agreement. Executive shall be entitled to select and change a beneficiary or beneficiaries to receive any benefit or compensation payable hereunder following Executives death by giving the Company written notice thereof. In the event of Executives death or a judicial determination of his incompetence, reference in this Agreement to Executive shall be deemed, where appropriate, to refer to his beneficiary(ies), estate or other legal representative(s). If Executive should die following his Date of Termination while any amounts would still be payable to him hereunder if he had continued to live, all such amounts unless otherwise provided herein shall be paid in accordance with the terms of this Agreement to such person or persons so appointed in writing by Executive, or otherwise to his legal representatives or estate.

14. Notice. For the purposes of this Agreement, notices, demands and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered either personally or by United States certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Executive:

L. Lowry Mays  
200 Concord Plaza, Suite 600  
San Antonio, Texas 78216

If to the Company:

Clear Channel Communications, Inc.  
200 Concord Plaza, Suite 600  
San Antonio, Texas 78216  
Attention: President

with a copy to:

Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1700 Pacific Avenue  
Suite 4100  
Dallas, Texas  
Attention: Michael Dillard

or to such other address as any party may have furnished to the others in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

15. Miscellaneous. No provisions of this Agreement may be amended, modified, or waived unless such amendment or modification is agreed to in writing signed by Executive and by a duly authorized officer of the Company, and such waiver is set forth in writing and signed by the party to be charged. No waiver by either party hereto at any time of any breach by the other party hereto of any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement. The respective rights and obligations of the parties hereunder of this Agreement shall survive Executives termination of employment and the termination of this Agreement to the extent necessary for the intended preservation of such rights and obligations. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Texas without regard to its conflicts of law

principles.

16. Validity. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

18. Entire Agreement. Except as otherwise provided herein, this Agreement sets forth the entire agreement of the parties hereto in respect of the subject matter contained herein and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto in respect of such subject matter. Except as otherwise provided herein, any prior agreement of the parties hereto in respect of the subject matter contained herein is hereby terminated and cancelled.

20. Withholding. All payments hereunder shall be subject to any required withholding of Federal, state and local taxes pursuant to any applicable law or regulation.

21. Noncontravention. The Company represents that the Company is not prevented from entering into, or performing this Agreement by the terms of any law, order, rule or regulation, its by-laws or declaration of trust, or any agreement to which it is a party, other than which would not have a material adverse effect on the Company's ability to enter into or perform this Agreement.

22. Section Headings. The section headings in this Employment Agreement are for convenience of reference only, and they form no part of this Agreement and shall not affect its interpretation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

CLEAR CHANNEL COMMUNICATIONS, INC.

By: /s/Randall Mays  
Name: Randall Mays  
Title: Vice President

/s/L Lowry Mays  
L. Lowry Mays

**Attachment C**

AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

December 31, 2002

Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
450 Fifth Street, N.W.  
Washington, DC 20549

Re: Clear Channel Communications, Inc.  
Shareholder Proposal Submitted by the AFL-CIO Reserve Fund

Ladies and Gentlemen:

We have acted as special Texas counsel to Clear Channel Communications, Inc., a Texas corporation (the "**Company**") in connection with the Company's request for an opinion as to whether a proposal by the AFL-CIO Reserve Fund (the "**Fund**"), if implemented by the Board of Directors of the Company, would breach the terms of an Employment Agreement (the "**Agreement**") dated as of October 1, 1999 by and between the Company and L. Lowry Mays, and thereby constitute a violation of the laws of the State of Texas. In connection with this letter, we have examined the Agreement and such other matters as we have deemed appropriate to render the opinion set forth herein.

The Fund has proposed that the Company's shareholders take action on the following proposal:

Resolved: The shareholders of Clear Channel Communications, Inc. (the "**Company**") urge the Board of Directors to amend the bylaws to require that an independent director who has not served as chief executive officer ("**CEO**") of the Company shall serve as chairman of the Board of Directors.

Based upon our analysis of the Agreement and relevant Texas case law, we are of the opinion that the proposal set forth by the Fund, if implemented by the Company's board of directors without reference to the terms of the Agreement, would cause the company to breach the Agreement in violation of Texas law, which would in turn subject the Company for liability for damages.

The foregoing opinion is qualified in its entirety and subject to the following:

1. This law firm is a registered limited liability partnership organized under the laws of the State of Texas. We express no opinion herein as to any laws other than the laws of the State of Texas.

AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

Securities and Exchange Commission

December 31, 2002

Page 2

2. This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated. We assume herein no obligation, and hereby disclaim any obligation, to make any inquiry after the date hereof or to advise you of any future changes in the foregoing or of any fact or circumstance that may hereafter come to our attention.
3. This letter is delivered solely to you and is solely for your benefit, and it may not be relied upon by any other person or entity with out the prior written consent of this firm, except that this letter may also be delivered to and relied upon by the Company.

Very truly yours,



AKIN GUMP STRAUSS HAUER & FELD LLP

# American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 637-5000  
<http://www.aflcio.org>

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January 21, 2003

Securities and Exchange Commission  
Division of Corporate Finance  
Office of Chief Counsel  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: Request by Clear Channel Communications, Inc.  
to omit a shareholder proposal  
submitted by the AFL-CIO Reserve Fund

RECEIVED  
2003 JAN 22 PM 3:30  
OFFICE OF CHIEF COUNSEL  
DIVISION OF CORPORATE FINANCE

Dear Sir/Madam:

We are writing in response to the December 31, 2002 letter ("No-Action Request") from Clear Channel Communications, Inc. ("the Company"). That letter states the Company's intention to omit from its proxy materials a non-binding shareholder proposal ("the Proposal") submitted by the AFL-CIO Reserve Fund ("the Fund"), which urges the Board of Directors to adopt a bylaw amendment requiring that the Chairman of the Board be "an independent director who has not served as chief executive officer ("CEO") of the Company." As grounds for its action the Company argues (1) that Rules 14a-8(i)(2) and 14a-8(i)(6) permit exclusion of the Proposal because its implementation would compel the Company to breach an employment contract with the Company's current Chairman and CEO, in violation of Texas law; and (2) that the Proposal relates to the Company's "ordinary business operations" within the meaning of Rule 14a-8(i)(7). For the reasons explained below, the Commission should reject these arguments and conclude that the Fund's Proposal may not be excluded.

## **I. The Fund's Proposal Would Not Require the Company to Breach the Employment Contract with its Current Chairman and CEO**

The Company's objections under Rules 14a-8(i)(2) and 14a-8(i)(6) hinge on the argument that implementing the Fund's Proposal would *require* the Company to breach its employment contract with Chairman and CEO L. Lowry Mays. The Proposal, however, does not *compel* the Company to take any specific action, much less action that

Division of Corporate Finance, Office of Chief Counsel

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would breach a current contract or violate applicable law. By its terms, the Fund's policy-oriented Proposal merely "urge[s]" the Board to amend the Bylaws to provide for an independent director-Chairman who has not served as the Company's CEO. Moreover, the Company could implement the Proposal by amending the Bylaws *prospectively*, so as to "grandfather" the remainder of Mr. Mays' contractual term as Chairman and CEO. For these reasons, when faced with a substantially identical proposal in *Tyco International Ltd.* (December 16, 2002), the Staff concluded that the proposal calling for an independent, non-CEO Chairman should not be excluded from the corporation's proxy materials.

We further note that the express terms of the employment contract refute the Company's argument. In particular, Section 6 (e) of the employment contract gives the Company the right to terminate Mr. Mays' current employment at any time on 30 days' notice, "without cause." Under Section 6(e), "such termination shall not in and of itself be, nor shall it be deemed to be, a breach of this Agreement."<sup>1</sup>

In short, the Company clearly has the power to implement the Proposal in ways that would not breach its existing employment contract with Mr. Mays and would not violate applicable law. Rules 14a-8(i)(2) and 14a-8(i)(6) therefore provide no basis for excluding the Fund's Proposal. Although we do not believe that any change is required in the language of the Proposal, if the Staff deems some clarification necessary we would be happy to confer regarding appropriate wording.

## **II. The Fund's Proposal Does Not Relate to the Company's "Ordinary Business" Operations**

Corporations cannot rely on the "ordinary business" rationale of Rule 14a-8(i)(7) to exclude shareholder proposals recommending that the Board be headed by a separate and independent Chairman. See *America West Holdings Corp.* (April 14, 1998). As the proponent explained in *America West*, such proposals do not seek to micro-manage the hiring and firing of corporate personnel. Rather, they address important corporate governance policies involving matters of widespread public debate. The Fund's Proposal, as noted above, does not require the Company to fire or hire any individual. Accordingly, the Company's "ordinary business" objection has no merit.

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<sup>1</sup> Even during the remaining term of the employment contract, moreover, the Company and its Chairman/CEO could reach a voluntary agreement for Mr. Mays to relinquish the title of Chairman of the Board while retaining his position as CEO, in response to shareholder approval of the policy Proposal.

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### CONCLUSION

For the reasons discussed above, the Company should not be permitted to exclude the Fund's Proposal in reliance on rule 14a-8(i)(2), Rule 14a-8(i)(6) or Rule 14a-8(i)(7). As previously indicated, the Fund is willing to cooperate and confer in making appropriate clarifications, if deemed necessary. Please do not hesitate to call me at (202) 637-3900 if you have any questions or require additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "William Patterson", with a long horizontal flourish extending to the right.

William Patterson

Director, Office of Investment

**DIVISION OF CORPORATION FINANCE  
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

March 5, 2003

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Clear Channel Communications, Inc.  
Incoming letter dated December 31, 2002

The proposal urges the board to amend the bylaws to require that an independent director who has not served as chief executive officer of Clear Channel serve as chairman of the board of directors.

We are unable to concur in your view that Clear Channel may exclude the proposal under rules 14a-8(i)(2) and 14a-8(i)(6). Accordingly, we do not believe that Clear Channel may omit the proposal from its proxy materials in reliance on rules 14a-8(i)(2) and 14a-8(i)(6).

We are unable to concur in your view that Clear Channel may exclude the proposal under rule 14a-8(i)(7). Accordingly, we do not believe that Clear Channel may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,



Katherine W. Hsu  
Attorney-Advisor