

Attorney General

Eliot Spitzer

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CBS RADIO SETTLES PAYOLA ALLEGATIONS **Court Rejects Entercom's Challenge to Spitzer Lawsuit**

Hailing two new developments in his ongoing music industry probe, State Attorney General Eliot Spitzer today announced a settlement with CBS Radio, Inc., and a decision by the New York Supreme Court sustaining the Attorney General's lawsuit against radio conglomerate Entercom Communications Corp.

CBS Radio, formerly Infinity Broadcasting, is the third largest radio conglomerate in the country, operating approximately 178 stations nationwide, including stations in Rochester, Buffalo and New York City.

Spitzer's investigation revealed that certain stations owned by CBS Radio openly solicited illegal financial benefits, expensive vacation packages, gift cards and other valuable items from record labels in exchange for playing the labels' songs. The stations also received funds from independent promoters, or "indies," upon agreeing to add certain songs to the stations' playlists. The indies would pay the stations with money received from the record labels to secure "adds."

"The sale of a station's valuable air time to the highest bidder violates state and federal laws and robs consumers of their right to know why the songs they hear on the radio are being broadcast," Spitzer said. "Our settlement with CBS Radio represents a significant milestone in our effort to reform the music industry for the benefit of the listening public."

In addition to settlements with all four major record companies, SonyBMG, Warner, Universal and EMI, the Attorney General's payola investigation has resulted in a lawsuit, filed last March against Entercom. Earlier this week, in a sweeping decision, a State Supreme Court Judge denied "in all respects" Entercom's Motion to Dismiss Spitzer's case, allowing the lawsuit to proceed.

Radio stations are the main vehicle for record labels to expose listeners to their music as stations play or "spin" their songs. Airplay is the single most effective driver of music sales, and the resulting competition for airplay has created a black market for the illegal sale of "spins" in which radio stations accept payments and other inducements from record labels.

During the investigation, Spitzer's office obtained emails and sworn testimony from CBS Radio employees who admitted trading airplay for promotional benefits as part of their business model. In fact, from 1999 through 2003, employees at Rochester radio stations WPXY, WZNE and WCMF were required to provide regular memos or spreadsheets to station management summarizing the money garnered in exchange for playlist adds. 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”.

Some CBS Radio stations accepted payola for songs that station managers acknowledged would not have otherwise been placed on the playlist. On June 16, 2003, WPXY added “Shut Up” by Nick Lachey and “You Are My #1” by Smashmouth in exchange for “flyaways” – airplane trips to be used for contest prizes.

During the same period between 1999 and 2003, the music director for stations WPSY and WZNE, sold blocks of advertising time to labels for the purpose of playing portions of the song to improve its position on the music charts. Spins, whether purchased or not, are detected the same way by radio monitoring services.

Under the terms of the settlement, CBS Radio has agreed to: undertake company-wide reforms, including the immediate cessation of receiving payments and other inducements from record labels in exchange for airplay; discontinue using independent promoters as a pass-through for securing airplay; hire a compliance officer to monitor promotion practices; and implement an internal system to detect any future abuses.

CBS Radio will also make a \$2 million payment, which will be distributed through the Rockefeller Philanthropy Advisors, to New York State not-for-profit entities to fund music education and appreciation programs.

The Attorney General acknowledged CBS Radio’s cooperation in resolving this matter.

The settlement was handled by Assistant Attorneys General Shahla Ali, David Weinstein, and Special Counsel Mary Ellen Burns, under the direction of Terryl Brown Clemons, Assistant Deputy Attorney General for the Division of Public Advocacy.

Attachments:

CBS Assurance of Discontinuance & Exhibits
New York Supreme Court Decision

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