

CAUSE NO. \_\_\_\_\_

CLEAR CHANNEL COMMUNICATIONS, INC.; and CC MEDIA HOLDINGS, INC.	§	IN THE DISTRICT COURT
	§	
Plaintiffs	§	
	§	
v.	§	
	§	
CITIGROUP GLOBAL MARKETS, INC.;	§	
CITICORP USA, INC.; CITICORP	§	
NORTH AMERICA, INC.; MORGAN	§	_____ JUDICIAL DISTRICT
STANLEY SENIOR FUNDING, INC.;	§	
CREDIT SUISSE SECURITIES USA, LLC;	§	
RBS SECURITIES CORPORATION;	§	
WACHOVIA INVESTMENT HOLDINGS,	§	
LLC; WACHOVIA CAPITAL MARKETS,	§	
LLC; and DEUTSCHE BANK	§	
SECURITIES INC.	§	
	§	
Defendants.	§	BEXAR COUNTY, TEXAS

**PLAINTIFF’S VERIFIED PETITION AND  
APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION;  
REQUEST FOR EXPEDITED DISCOVERY; AND  
REQUEST FOR EXPEDITED TRIAL**

This lawsuit stems from Defendants’ tortious interference with Plaintiffs’ contract which, if allowed to continue and succeed, could result in immeasurable damages exceeding the parties’ agreement for **\$26 billion**.

Plaintiff Clear Channel Communications, Inc. (“Clear Channel”) and CC Media Holdings, Inc. (“CC Media”) have entered into a \$26 billion definitive Agreement And Plan Of Merger (the “Merger Agreement”). As a result of the Merger Agreement, which **must close no later than June 12, 2008**, Plaintiff CC Media will become the owner of Clear Channel and Clear Channel’s shareholders will receive **\$19.5 billion**. The opportunity to acquire Clear Channel is

uniquely valuable and irreplaceable. Clear Channel is a leading U.S. media company that owns over 900 radio stations. In that, alone, it is an asset that cannot be replaced. In addition, a Clear Channel subsidiary is the largest outdoor advertising firm in the country. Clear Channel is also one of the most prominent companies in San Antonio, Texas. In short, Clear Channel is a one-of-a-kind company and CC Media has every right to close its acquisition of Clear Channel. Similarly, Clear Channel and its shareholders have every right to receive **\$19.5 billion** in payment for the company.

Before the Merger Agreement was ever executed and before Clear Channel accepted CC Media's bid, Defendants and their affiliates signed a definitive debt commitment letter, later superseded by a May 17, 2007 debt commitment letter (the "Commitment Letter"). By their execution of the Commitment Letter, Defendants agreed to provide debt funding for CC Media's purchase of Clear Channel. That commitment was contained in the Commitment Letter, all conditions of which have been satisfied – or would have been satisfied but for Defendants' wrongful interference with the Merger Agreement. Yet – for reasons of their own – Defendants have tortiously interfered with Plaintiffs' Merger Agreement, most recently, by refusing to execute necessary documents in an overt effort to "run out the clock" and cause Plaintiffs' Merger Agreement to collapse.

Defendants have made clear that they are determined, by any means possible, to destroy the Merger and thus avoid their obligation to fund CC Media's acquisition as they are required to do. Defendants' have refused to honor their obligations not because of any wrongful conduct by, or change in circumstances pertaining to, Clear Channel or CC Media. Instead, though they have not even an arguable right or privilege permitting them to do so, Defendants have responded to *their own* market conditions by fabricating false reasons to refuse to proceed with the transaction

– all in an effort to deprive Plaintiffs of their vested contractual rights under the Merger Agreement which Defendants know **must close by June 12, 2008**. Unless the Court stops them, Defendants will succeed, by their unlawful conduct and willful breach, in reallocating to the Plaintiffs and Purchasers the market risk the Defendants expressly agreed in the Commitment Letter to assume.

Clear Channel and CC Media will be irreparably injured if Defendants are not immediately enjoined from tortiously interfering in their Merger Agreement, and will be equally – and irreparably – injured if Defendants are permitted to continue to refuse to proceed with the closing in good faith, as they are required to do. Accordingly, Clear Channel and CC Media have no choice but to file this Verified Petition in which they seek the following, emergency relief:

- An immediate Temporary Restraining Order and Temporary Injunction:
  - Ø prohibiting Defendants from interfering further in the Merger Agreement between Clear Channel and CC Media;
  - Ø extending the termination date of the Commitment Letter until such time as the Merger Agreement has closed or Clear Channel and CC Media have elected – in good faith and for their own reasons – to terminate it themselves;
  - Ø prohibiting Defendants from destroying, removing, or secreting documents and records related to the issues underlying the claims, assertions, and causes of action set forth in this lawsuit; and
- An order setting an expedited discovery schedule and establishing an expedited trial setting of May 12, 2008, so as to ensure that Plaintiffs may try their case to a jury *before* their Merger Agreement expires.

Entry of injunctive relief is the only way to preserve the last, non-belligerent status quo between the parties. That *status quo ante*, in which both the Merger Agreement and the Commitment Letter were in effect and moving to final closing, is in imminent danger of being irreparably destroyed by Defendants' malicious, tortious interference. Injunctive relief is the only adequate remedy to preserve those agreements, intact, until such time as the Court can hold an expedited trial on Plaintiffs' claims of tortious interference. In the absence of injunctive relief, both Clear Channel and CC Media will be irreparably injured in a manner for which there is no adequate remedy at law. A transaction of this magnitude is wholly unique: neither comparable financing nor an alternative buyer is readily located or substituted if this opportunity is destroyed by Defendants' willful, vicious, and unjustified efforts to destroy the Merger Agreement. Nor will CC Media ever be able to locate any other company with similar, unique assets – in the form of hundreds of exclusive federal broadcast licenses and outdoor advertising permits – if the Merger Agreement fails.

For these reasons, and those stated in greater detail below, Plaintiffs request that the Court act immediately to protect their rights through the entry of a TRO and Temporary Injunction, and that it thereafter provide them with an expedited trial setting in which their claims may be heard by a jury. In support of their right to proceed with their Merger Agreement, unmolested by Defendants, Plaintiffs plead as follows:

#### **DISCOVERY PLAN**

Plaintiffs intend that this matter proceed as a Level 3 matter, with an expedited discovery control plan by Court order.

### **NO FEDERAL QUESTION AND EXCLUSIVE STATE COURT JURISDICTION**

This action arises solely under state law. Plaintiffs have invoked no federal claims or law of any kind. Plaintiffs expressly disclaim all potential federal claims. Furthermore, the parties to this action are not of diverse citizenship, and no other basis of federal jurisdiction exists.

Accordingly, the action is not removable on any basis.

### **PERSONAL JURISDICTION AND VENUE**

As set out in greater detail below, this Court has both general and specific personal jurisdiction over each of the Defendants. This Court has general personal jurisdiction because Defendants have continuous and systematic contacts with Texas through regularly conducted business and transactions in Texas; maintaining offices in, financing transactions in, and making their financial services available in Texas. In addition, this Court has specific personal jurisdiction because Defendants have committed deliberate tortious acts in Texas and directed at a Texas company, from which Plaintiffs' claims arise.

Venue is proper in Bexar County because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in San Antonio, Bexar County, Texas. Specifically, Defendants tortiously interfered with a contract involving a Texas corporation with its principal place of business in Bexar County, Texas, and, in doing so, caused injury – in Texas – to both Plaintiffs.

### **THE PARTIES**

1. Plaintiff Clear Channel Communications, Inc. is a Texas corporation with its principal place of business in San Antonio, Texas.

2. Plaintiff CC Media is a Delaware corporation with its principal place of business in New York. Pursuant to the Agreement And Plan Of Merger that has been approved by Clear

Channel's shareholders, Plaintiff CC Media has a contractual right to acquire Clear Channel no later than June 12, 2008.

3. Defendant Citigroup Global Markets Inc. is a New York corporation with its principal office located at 388 Greenwich Street, New York, New York 10013. Citigroup Global Markets Inc. can be served with process by serving its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

4. Defendant Citicorp USA, Inc. is a Delaware corporation with its principal office located at 450 Mamaroneck Avenue, Harrison, New York 10528. Citicorp USA, Inc. can be served with process by serving its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

5. Defendant Citicorp North America, Inc. is a Delaware corporation with its principal office located at 399 Park Avenue, New York, New York 10043. Citicorp North America, Inc. can be served with process by serving its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

6. Defendant Morgan Stanley Senior Funding, Inc. is a Delaware corporation with its principal office located at 1585 Broadway, New York, New York 10036. Morgan Stanley Senior Funding, Inc. may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code because it is a nonresident who is required by statute to designate or maintain a resident agent or engages in business in this state, but has not designated or maintained a resident agent for service of process; or it is a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a

designated agent for service of process, and this proceeding arises out of the Defendant's conduct or business done in this state.

7. Defendant Credit Suisse Securities (USA) LLC is a Delaware limited liability company with its principal office located at 11 Madison Avenue, New York, New York 10010. Credit Suisse Securities (USA) LLC can be served with process by serving its registered agent, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

8. Defendant RBS Securities Corporation is a Delaware corporation with its principal office located at 101 Park Avenue, New York, New York 10178. RBS Securities Corporation can be served with process by serving its registered agent, National Registered Agents, Inc., 16055 Space Center, Suite 235, Houston, Texas 77062.

9. Defendant Wachovia Investment Holdings, LLC is a Delaware limited liability company with its principal office located at 301 South College Street, Charlotte, North Carolina 28288. Wachovia Investment Holdings, LLC can be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code because it is a nonresident who is required by statute to designate or maintain a resident agent or engages in business in this state, but has not designated or maintained a resident agent for service of process; or it is a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process, and this proceeding arises out of the Defendant's conduct or business done in this state.

10. Defendant Wachovia Capital Markets, LLC is a Delaware limited liability company with its principal office located at 301 South College Street, Charlotte, North Carolina

28288. Wachovia Capital Markets, LLC can be served with process by serving its registered agent, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

11. Defendant Deutsche Bank Securities Inc. is a Delaware corporation with its principal office located at 60 Wall Street, New York, New York 10005. Deutsche Bank Securities Inc. can be served with process by serving its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

### **FACTUAL BACKGROUND**

#### **PLAINTIFFS AND THE PURCHASERS REACH AN AGREEMENT**

12. Clear Channel, a Texas corporation based in San Antonio, owns or operates through subsidiaries more than 900 radio stations and 800,000 outdoor advertising displays. Clear Channel employs more than 20,000 employees and has interests in other radio broadcasting entities.

13. On November 16, 2006, Clear Channel announced a proposed merger (the “Merger”) that would provide \$18.6 billion in cash to its shareholders and constitute one of the largest leveraged buyouts in the history of this nation.<sup>1</sup> A very competitive auction process preceded the Clear Channel announcement. Some of the largest private equity funds in the world competed for the opportunity to participate in a merger agreement with Clear Channel. A critical factor in the process from Clear Channel’s perspective was the terms and certainty of financing. In fact, Clear Channel required that bidders submit binding financing commitment letters as a part of the overall bid package. Clear Channel engaged advisors to review and assess the relative strength of the financing commitments.

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<sup>1</sup> Two amendments to the Merger Agreement resulted in a higher per-share price to shareholders, and other options in lieu of a cash payout under certain terms and conditions.

14. The Agreement And Plan Of Merger dated November 16, 2006<sup>2</sup> between Clear Channel and the Purchasers<sup>3</sup> set forth the terms and conditions of the anticipated Merger, and was accompanied by Defendants' binding commitment to finance the Merger. That commitment was contained in the Commitment Letter, all conditions of which have been satisfied – or would have been satisfied but for Defendants' wrongful interference in the Merger Agreement.

15. On May 17, 2007, the Purchasers and BT Triple Crown Capital Holdings III, Inc. (now known as CC Media Holdings, Inc.) entered into an amended Agreement And Plan Of Merger (the "Merger Agreement"), which provides for the merger of Mergerco, an entity established exclusively for purposes of the Merger,<sup>4</sup> with and into Clear Channel.<sup>5</sup> The Merger Agreement was, again, accompanied and supported by Defendants' unequivocal commitment to finance the Merger.<sup>6</sup>

16. Following the execution of the Merger Agreement, Clear Channel put forth enormous effort and expense in procuring its shareholders' approval of the proposed transaction, which was finally achieved on September 25, 2007. Clear Channel also expended substantial effort to obtain regulatory approval of the proposed Merger. Untold manpower and money has been devoted to these efforts.

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<sup>2</sup> Later amended by the parties as of April 18, 2007 and May 17, 2007.

<sup>3</sup> As used in this Petition, the term "Purchasers" refers to BT Triple Crown Merger Co., Inc.; B Triple Crown Finco, LLC, and T Triple Crown Finco, LLC, all parties to the Merger Agreement.

<sup>4</sup> Mergerco was established by Bain Capital Partners, LLC and Thomas H. Lee Partners, L.P. and certain of their affiliates (collectively, the "Sponsors").

<sup>5</sup> According to the terms of the Merger Agreement, Mergerco will cease to exist upon consummation of the Merger and Clear Channel will continue as the surviving entity and a wholly-owned subsidiary of CC Media.

<sup>6</sup> Additionally, the Defendants were well aware of the terms of the Merger Agreement, just as Plaintiffs were well aware of the Defendants' commitment to fund the transaction.

17. Plaintiffs' and the Purchasers' willingness and ability to enter into the Merger Agreement and pursue consummation of the Merger was dependent upon the Defendant Banks' timely commitment to fund the transaction, and the Defendants clearly understood and agreed that the consummation of the Merger was dependent on their fulfillment of their obligation to fund the corresponding loans. Defendants also understood that their concrete commitment, which was more robust and definitive than that provided by any other bidder, was a key reason why Plaintiff Clear Channel selected Plaintiff CC Media as its buyer. In short, Defendants actually knew about the Merger, about Plaintiffs' Merger Agreement, just as they knew that the certainty of available financing was integral to the overall negotiations and consummation of Plaintiffs' contract. Without this type of funding commitment, large commercial transactions would be virtually impossible to orchestrate, because the parties' expectations and corresponding negotiations and agreement depend, in large part, upon the lenders' solid commitment to any given project.

**DEFENDANTS COMMIT TO FUND THE MERGER TRANSACTION**

18. Many entities eager to participate in the nationally publicized proposed Merger, including Defendants, competed vigorously for the grand opportunity to participate as lenders in the transaction.<sup>7</sup> Ultimately, Defendants were awarded the contract because their Commitment Letter was so definitive and left nothing to chance concerning whether the funding would be available to close the transaction. Defendants, understanding the risks and desiring the rewards of doing so, executed a binding commitment to fund the Merger on or about November 16, 2006, and again on May 17, 2007. Through the Commitment Letter, Defendants collectively pledged

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<sup>7</sup> The transaction was given the code name Project Triple Crown.

more than \$22 billion through various types of credit facilities for purposes of the Merger transaction. The Commitment Letter constitutes a valid, binding, and enforceable agreement. It remains in effect today, and Defendants have no just reason for refusing to perform – or for their intentional interference in the closing of the Merger Agreement.

19. Executed by highly sophisticated and internationally renowned financial entities, the Commitment Letter guarantees essential, long-term financing for the Merger. It is not subject to Defendants' withdrawal. Among other things, in exchange for their commitment Defendants are ***guaranteed*** over **\$360 million** in fees over the life of their financing commitments.

20. Defendants are highly sophisticated financial institutions. They make money, at least in part, from the fact that interest rates and market conditions can, and do, vary – sometimes in dramatic fashion. When they signed the Commitment Letter, therefore, Defendants knew that market conditions can, and certainly *will*, change over time. That is precisely why, among other things, they negotiated a ***floating interest rate***, that is a fixed increment ***above*** the prevailing London InterBank Offering Rate (LIBOR). This floating interest rate was designed to, and does, protect Defendants against variations in the prevailing market interest rates. The floating rate commitment, and other provisions of the Commitment Letter, ensure that every Defendant will have a positive return, relative to the market, for every day the loans are in effect. In short, the Commitment Letter is a document that is designed to, and does, assure Defendants a substantial return to the market. It is not, therefore, subject to ***additional, non-contractual*** adjustments or dismissals to accommodate market conditions and/or Defendants' whim.

21. Defendants and Plaintiffs also specifically negotiated the allocation of risk in the event that market conditions changed. ***Critically, Defendants did not negotiate an option to***

*refuse to finance the transaction if market conditions made it difficult to syndicate the debt.*

The terms negotiated by these astute entities included the Defendants' unambiguous and unequivocal assumption of any risk associated with market conditions, including any potential deterioration of the credit markets.<sup>8</sup>

22. Indeed, the existence of a bridge facility is, in and of itself, an expression that the Purchasers and Defendants alike contemplated a change in credit markets. A bridge facility is a shorter-term means of financing that is, in itself, a reflection of the parties' understanding that there is *likely* to be a change in credit markets. The bridge financing anticipated was to be available *if* credit markets deteriorated and more economical, longer-term arrangements could not be achieved. Likewise, one express provision of the Merger Agreement, incorporated in the terms of Defendants' commitment, specifically *excludes* changes in securities, credit or financial market conditions as a basis for failure to perform.<sup>9</sup> Certainly, had market conditions improved, resulting in a greater benefit to Defendants than originally anticipated, Defendants would no

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<sup>8</sup> The Banks' commitment is subject only to very specific conditions, expressly stating that:

Notwithstanding anything in this Commitment Letter, the Fee Letter, the Credit Facilities Documentation or any other letter agreement or other undertaking concerning the financing of the transactions contemplated hereby to the contrary, the only conditions to availability of the Credit Facilities on the Closing date are set forth in each of the relevant Term Sheets under the heading "Initial Conditions" and in Exhibit E.

None of the Initial Conditions or Exhibit E conditions are relevant to the claims before this Court, as they do not, under the circumstances, provide the Banks with any excuse for failure to perform their obligations.

<sup>9</sup> Appendix A to the Merger Agreement at pp. 6 – 7 (emphasis supplied) reads in part: "Material Adverse Effect on the Company" shall mean any event, state of facts, circumstance, development, change, effect or occurrence . . . that has had or would reasonably be expected to have a material adverse effect on the business condition (financial or otherwise, operations or results of operations of the Company and its subsidiaries, taken as a whole, *other than (i) any Effect resulting from (A) changes in general economic or political conditions or the securities, credit or financial markets in general*, in each case, generally affecting the general television or radio broadcasting, music, internet, outdoor advertising or event industries . . ." At no time have either Defendants or the Purchasers ever suggested that a Material Adverse Effect has occurred that would void the Merger Agreement.

doubt revel in their good fortune rather than insist that they share any financial benefits with the Purchasers.

23. In illustration of Defendants' understanding of the risks they had assumed, the Commitment Letter expressly dictates, without ambiguity, that Defendants are not relieved from their commitment even in the event they are unable to syndicate financing for the transaction by selling interests in the subject loans to other financial institutions. Obviously, this provision contemplates that the credit markets could be less than ideal for the Merger financing purposes. Nonetheless, Defendants expressly assumed that risk, and agreed to perform *regardless of whether that risk materialized*.

24. To further solidify the obligations set forth in the Commitment Letter, the Purchasers and Defendants included language in the Commitment letter, atypical in this sort of commitment, which provided for a specific understanding of the range of loan terms.<sup>10</sup> This stringent provision virtually guaranteed that there would be no basis upon which to dispute the definitive loan documentation and, therefore, no basis upon which they could thwart the consummation of Plaintiffs' Merger Agreement.

25. In spite of their commitment, however, Defendants have devised a scheme and engaged in a course of action designed to destroy the Purchasers' ability to consummate the transaction in order to deprive Clear Channel and its shareholders of the benefits of the bargain

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<sup>10</sup> The Commitment Letter terms and provisions provide that the Banks will provide financing on terms no less favorable to the Purchasers than terms contained in credit agreement documentation in similar transactions involving the Sponsors. The Sponsors have participated in a number of similar transactions. In each such case, the commitment letter contained general language with respect to the use of revolving credit facility proceeds that permitted the revolver to be used for general corporate purposes, and the eventual definitive documents, executed prior to closing the transaction, permitted the company to use cash flow, revolver borrowings, and utilize incremental borrowings to refinance the maturing notes. Nonetheless, the Banks now propose to fundamentally alter these terms to benefit themselves or to destroy any ability for the Purchasers to close the Merger transaction.

made and to prevent CC Media from acquiring the one-of-a-kind asset it has the binding right to purchase. As explained below, Defendants' deliberate tortious interference – which is without justification or privilege – threatens to inflict an irreparable injury on Plaintiffs if it is not immediately enjoined.

**DEFENDANTS ATTEMPT TO DERAIL THE MERGER**

26. Because of the size of the credit arrangement to which they committed themselves, Defendants would almost certainly seek to sell the debt in the secondary market either before or shortly after funding the transaction. The likelihood or ultimate need to do so, however, was never made a condition to the Commitment Letter. Defendants, at all times, understood and assumed the risk that rather than syndicate the Merger debt, they might simply have to hold it on their balance sheets to maturity.

27. Recently, conditions in the credit markets have made it more difficult to syndicate loans of the type Defendants are contractually obliged to provide. In some transactions, syndicated loans have sold at deep discounts. These conditions, however, do not give Defendants even an *arguable* right to refuse to fund the Merger for the reasons set forth above.

28. Faced with an unbreakable commitment to fund the Merger *regardless* of conditions in the credit markets, Defendants schemed to cause the Merger to fail. At least as early as July 2007, and unbeknownst to Plaintiffs, Defendants began to rethink their obligations and proceeded to orchestrate the methodology by which they might escape the commitment they had made. With an eye toward completely dismantling the Merger, Defendants engaged in a scheme of collusion and interference that they believed would ultimately free them from their commitment. As part of their scheme, Defendants:

- threatened to disrupt another wholly unrelated transaction involving the Purchasers unless the Purchasers agreed to permit Defendants to abrogate and undermine their binding commitment to fund the Merger;
- schemed and engaged in a course of conduct designed to provide Defendants with new contractual rights – not authorized or required by the Commitment Letter – that would ultimately give Defendants a unique ability to arrest the Merger transaction in its entirety; and
- schemed and engaged in a course of conduct designed to stall the Merger and make it ultimately impossible for the Purchasers to close the Merger transaction in the timeframe permitted under the Merger Agreement.

29. Defendants engaged in the foregoing conduct with the express intent to eviscerate the Merger Agreement and deprive Plaintiffs of the benefit of the agreement they had approved. As early as July 2007, Defendants intended to foreclose the parties' ability to consummate the Merger unless they could extort more favorable and lucrative financing terms from the Purchasers.<sup>11</sup>

30. In September 2007, the Citigroup entities, lead financier in an entirely different transaction, informed one of the Purchasers and Sponsors that unless the Purchasers and Sponsors capitulated to Citigroup's demands relating to the Clear Channel transaction, Citigroup would refuse to commit to its share of the financing arrangement negotiated for the other transaction. Citigroup's threat and its message to Plaintiffs was clear: Purchasers would either cede their rights to Defendants and dramatically alter the terms of the Commitment Letter

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<sup>11</sup> An internal analysis for one of the Defendants revealed the Defendants' intention to change the existing and binding terms of the Commitment Letter to "make us whole . . ."

*without penalty*, or Defendants would find a way to punish them, not only in the Merger transaction, but in other transactions as well.

31. Adhering to their scheme to disrupt, hinder, and ultimately destroy any possibility of closing the Merger transaction, Defendants have continually and repeatedly delayed delivery of necessary documentation.<sup>12</sup> With “hat in hand” as they described it, Defendants approached the Sponsors on or about December 11, 2007 and made the astonishing demand that the Purchasers grant additional concessions to Defendants due to changes in the marketplace. Failing the Purchasers’ grant of the requested charity, the Purchasers could face Defendants’ withdrawal of financing for the Merger.

32. As Defendants are well aware, neither the Merger Agreement between Plaintiffs and the Purchasers nor the Commitment Letter allows room for concessions to Defendants. Interestingly, at no time have Defendants claimed that they have any contractual entitlement to change the terms of their commitment, or to refuse to fund the Merger under the circumstances.<sup>13</sup> Defendants knew, however, that if they could force the Purchasers and/or the Sponsors to grant them additional rights, Defendants could gain exclusive control over whether the Merger would close.

33. In furtherance of their plan to disrupt, hinder, and ultimately destroy the Merger transaction, Defendants have repeatedly insisted that the Purchasers agree to terms and rates

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<sup>12</sup> For example, notwithstanding the March 18 date they had proposed for the closing of the Senior Bridge Facility, the Banks have proceeded in a manner designed to make a closing of the Senior Bridge Facility on that date or a later date impossible, jeopardizing the ability of the Purchasers to close the acquisition in March or by the June 12, 2008 Termination Date.

<sup>13</sup> Defendants have, therefore, virtually admitted that their interference with the Merger Agreement is without justification or excuse.

inconsistent with Defendants' binding Commitment Letter. Additionally, Defendants have attempted to unilaterally alter the fundamental nature of the financing to which they committed.

34. For example, Defendants demanded contractual changes that are designed, in part, to restrict or even preclude Clear Channel's ability to use its cash flow, to redeem more than \$2 billion in existing notes as they reach maturity, and to achieve other basic corporate purposes.<sup>14</sup> Such changes are entirely inconsistent with the parties' agreements in that the Commitment Letter expressly provides Clear Channel with these specific financial rights. Other proposed changes would expose the Purchasers to a variety of risks neither anticipated nor assumed through the parties' negotiations, and may expose Clear Channel to an enormous liquidity crisis potentially creating an unanticipated need for substantial equity infusions in the near future. This circumstance would dilute CC Media's investment and deprive it of the very benefit it sought to achieve in privatizing Clear Channel.

35. Defendants' conduct is entirely inconsistent with its commitment to the Purchasers, and is even inconsistent with Defendants' own prior conduct and presentations. Indeed, Defendants have engaged in ongoing efforts to impose impossible and burdensome terms on the Purchasers that are inconsistent with Defendants' obligations and are designed to frustrate the Purchasers and cause the Purchasers to breach the terms of the Merger Agreement.

36. Defendants' conduct illustrates their bad faith and intent to interfere with and induce the Purchasers' breach of the Merger Agreement. While declaring that they intend to document commercially reasonable credit terms, Defendants' transparent intent is to entirely

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<sup>14</sup> For example, the Banks told the Sponsors/Purchasers in January 2008 that "Univision's term loan [is] the most comparable credit with respect to industry and leverage." Even though Univision is a company with assets half those of Clear Channel and EBITDA one-third the size of Clear Channel's, the Banks proposed Credit Agreement limitations or "baskets" for future investments or incidental borrowings made by Clear Channel that were far lower than those included in the Univision financing.

derail the Merger. Indeed, Defendants know quite well that their failure to fund the transaction will result in the failure of the Merger. That is, however, precisely Defendants' unlawful objective.

37. Defendants' express hope is that the Purchasers will walk away from them – *and* from the Merger. Defendants' hope is based upon their belief that such an occurrence would somehow insulate them from billions of dollars in liability they face for refusing to fund this unique transaction. In fact, when presenting the Sponsors with draft financing documents, Defendants made the explicit comment to the Sponsors that the Sponsors certainly would not approve of the draft documents and the unilateral changes to the parties' agreement reflected therein.

38. Because of Defendants' purposeful delays, misrepresentations, interference, and bad faith, Plaintiffs have lost valuable time, resources, and opportunities. The Merger has reached a critical stage. Only a few weeks remain until the Merger Agreement terminates. If Defendants are permitted to continue to interfere and delay the progress of the transaction, Plaintiffs will be irreparably injured.

39. Clear Channel will lose not only the benefit of its existing bargain due to Defendants' interference and bad faith, it will also lose, irretrievably, the opportunity to investigate alternative acquisition, merger, or other corporate opportunities that it had but relinquished when it executed the Merger Agreement. Plaintiff CC Media will, of course, lose the opportunity to own the entirely unique set of assets that currently belong to Clear Channel. The opportunity to secure comparable financing which might have enabled the Merger transaction to close on a timely basis has vanished.

40. These injuries are wholly irreparable and immeasurable. There is no adequate remedy at law absent an immediate award of injunctive relief to protect Plaintiffs' vested rights. In the alternative, as a result of Defendants' tortious interference, inducement of breach of contract, and their scheme to derail the Merger, Plaintiffs have suffered damages in excess of twenty-six billion dollars.

***TORTIOUS INTERFERENCE WITH CONTRACT***

41. Plaintiffs incorporate and reallege the factual assertions contained in paragraphs 12 through 40 above as though fully set forth herein.

42. Plaintiffs and the Purchasers are parties to the November 16, 2006 Merger Agreement, as amended on April 18, 2007 and May 17, 2007. None of Defendants is a party to, or an intended or express beneficiary of, the Merger Agreement.

43. The Merger Agreement is a valid, binding, and enforceable contract. Plaintiffs stand ready, willing, and able to perform their obligations under the Merger Agreement. The Sponsors have funded their equity commitments, and all conditions required to close the Merger have been satisfied. The failure of the Merger, however, is imminent due to Defendants' tortious interference and conduct specifically directed at halting the transaction.

44. Defendants have systematically, willfully and intentionally interfered with the Merger Agreement, with the express knowledge and intention that their acts would render the Merger transaction impossible. Defendants' interference is neither justified nor privileged, and has caused and threatens to cause irreparable injury to the Plaintiffs, both of whom will lose the benefits of the unique agreement negotiated. Additionally, no company remotely similar to Clear Channel is available for purchase by Plaintiff CC Media. Because money damages are not an adequate remedy and because alternative opportunities once available to the Plaintiffs are but

a distant memory, the Court should act immediately to protect Plaintiffs rights through the entry of a TRO and Temporary Injunction, and that it thereafter provide them with an expedited trial setting in which their claims may be heard by a jury.

45. Defendants' actions were committed willfully and intentionally. But for Defendants' willful interference, the Purchasers and CC Media could have timely performed as agreed under their contract with Clear Channel. Indeed, the Purchasers confirmed that they were ready to perform, and would have performed, but for Defendants' interference and refusal to adhere to their obligations.

46. Defendants' tortious actions have caused substantial injury to Plaintiffs by foreclosing any possibility of consummating the Merger. This, in turn, has resulted in tens of billions of dollars and other untold and immeasurable damages to Plaintiffs.

47. The injuries and damages that Plaintiffs sustained as a result of the Purchasers' inability to consummate the Merger Agreement is a proximate result of Defendants' interference with the Merger Agreement as specified herein.

#### ***EXEMPLARY DAMAGES***

48. Plaintiffs incorporate and reallege the factual assertions contained in paragraphs 12 through 47 above. All of the foregoing acts committed by the Defendants were committed maliciously and intentionally, so as to entitle Plaintiffs to exemplary damages. Plaintiffs request that the Court award exemplary damages in the maximum amount allowed by law.

#### ***APPLICATION FOR TEMPORARY RESTRAINING ORDER***

49. Plaintiffs incorporate and reallege the factual assertions contained in paragraphs 12 through 48 above as though fully set forth herein.

50. Plaintiffs have reason to believe, and do believe, that Defendants have sabotaged and will continue to sabotage the consummation of the Merger. Additionally, Plaintiffs fear that Defendants may destroy, remove or secret documents and records related to the issues and causes of action set forth in this suit in an attempt to conceal crucial evidence of the conduct cited herein. If Defendants succeed in these efforts, Plaintiffs will suffer immediate and irreparable harm in that:

- the valuable Merger opportunity – which brings with it a unique and heavily negotiated privatization of a now public entity – will be lost;
- the passage of many months time has ensured that there is no substitute or alternative for the Merger opportunity as contemplated between Plaintiffs and the Purchasers;
- future opportunities of the merged entity will be lost, including those available to a private entity versus a public entity;
- the credibility and goodwill of Plaintiffs and the Purchasers will be lost; and
- documentation relating to the claims asserted herein will be destroyed.

51. The immediate and irreparable harm and injury will damage and destroy Plaintiffs' rights and could jeopardize Clear Channel's entire future.

52. Plaintiffs are in an extraordinary situation in that they have no adequate remedy at law or otherwise to prevent the irreparable harm or damage that may occur unless Defendants are immediately restrained from engaging in the conduct cited herein. In order to preserve the status quo and to prevent imminent and irreparable injury to Plaintiffs' vested rights, the Court should grant an immediate Temporary Restraining Order. Therefore, Plaintiffs request that this Court immediately issue a temporary restraining order:

- (a) extending the termination date of the Commitment Letter until such time as the Merger Agreement has closed;
- (b) restraining Defendants and their officers, agents, servants, employees, representatives, assigns and/or any other persons or entities acting on their behalf or in concert or participation with them from directly or indirectly doing, any of the following:
  - (1) interfering in any way with the consummation of the Merger Agreement, including, but not limited to:
    - (A) interfering with or thwarting consummation of the Merger Agreement by refusing to fund the Merger transaction as agreed in the Commitment Letter;
    - (B) interfering with or thwarting consummation of the Merger Agreement by declaring termination, failure, nullity, expiration or other fatality of the Commitment Letter or any corresponding agreement, including the Merger Agreement regardless of any termination or expiration provisions set forth therein;
    - (C) interfering with or thwarting consummation of the Merger Agreement by refusing to act in good faith in the drafting of definitive loan documents as agreed in the Commitment Letter;
    - (D) interfering with or thwarting consummation of the Merger Agreement by violating the terms of the Commitment

Letter and/or by insisting on terms, provisions, and/or concessions inconsistent with the terms of the Commitment Letter and the Defendants prior representations and presentations;

- (E) depleting funds available for purposes of the Merger;
- (2) negotiating, entering into, canceling, altering, or modifying any oral or written contracts, agreements, understandings, or arrangements, which conduct would operate to modify, compromise, jeopardize, sabotage, undermine, nullify, void, terminate, eliminate, hinder, or obstruct consummation of the Merger Agreement and/or funding under terms of the Commitment Letter;
- (3) engaging in any other conduct that would operate to modify, compromise, jeopardize, sabotage, undermine, nullify, void, terminate, eliminate, hinder, or obstruct consummation of the Merger Agreement and/or funding under terms of the Commitment Letter; and
- (4) destroying, removing, or secreting documents and records related to the issues underlying the claims, assertions, and causes of action set forth in this lawsuit.

53. The requested temporary restraining order will allow the maintenance of the last actual peaceable non-contested status quo.

54. Plaintiffs are willing and able to post a reasonable bond in relation to this application for temporary restraining order. Because Defendants will suffer no injury even if it is later established that this injunctive relief was entered in error, only a nominal bond is warranted.

***APPLICATION FOR TEMPORARY INJUNCTION***

55. Plaintiffs incorporate and reallege the factual assertions contained in paragraphs 12 through 54 above as though fully set forth herein.

56. Plaintiffs request that this Court set a hearing on their application for temporary injunction and issue an order directing Defendants to appear at that hearing. At that hearing, Defendants should show cause, if any, why this Court should not enter a temporary injunction to fully protect the rights of Clear Channel and CC Media during the pendency of this expedited proceeding.

57. Plaintiffs are in an extraordinary situation in that they have no adequate remedy at law or otherwise to prevent the irreparable harm or damage that may occur unless Defendants are immediately restrained from engaging in the conduct cited herein. In order to preserve the status quo and to prevent imminent and irreparable harm to Plaintiffs' vested rights, the Court should grant a Temporary Injunction. Therefore, Plaintiffs request that this Court issue a temporary injunction:

- (a) extending the termination date of the Commitment Letter until such time as the Merger Agreement has closed;
- (b) restraining Defendants and their officers, agents, servants, employees, representatives, assigns and/or any other persons or entities acting on their behalf or in concert or participation with them from directly or indirectly doing, any of the following:

- (1) interfering in any way with the consummation of the Merger Agreement, including, but not limited to:
  - (A) interfering with or thwarting consummation of the Merger Agreement by refusing to fund the Merger transaction as agreed in the Commitment Letter;
  - (B) interfering with or thwarting consummation of the Merger Agreement by declaring termination, failure, nullity, expiration or other fatality of the Commitment Letter or any corresponding agreement, including the Merger Agreement regardless of any termination or expiration provisions set forth therein;
  - (C) interfering with or thwarting consummation of the Merger Agreement by refusing to act in good faith in the drafting of definitive loan documents as agreed in the Commitment Letter;
  - (D) interfering with or thwarting consummation of the Merger Agreement by violating the terms of the Commitment Letter and/or by insisting on terms, provisions, and/or concessions inconsistent with the terms of the Commitment Letter and the Defendants prior representations and presentations;
  - (E) depleting funds available for purposes of the Merger;

- (2) negotiating, entering into, canceling, altering, or modifying any oral or written contracts, agreements, understandings, or arrangements, which conduct would operate to modify, compromise, jeopardize, sabotage, undermine, nullify, void, terminate, eliminate, hinder, or obstruct consummation of the Merger Agreement and/or funding under terms of the Commitment Letter;
- (3) engaging in any other conduct that would operate to modify, compromise, jeopardize, sabotage, undermine, nullify, void, terminate, eliminate, hinder, or obstruct consummation of the Merger Agreement and/or funding under terms of the Commitment Letter; and
- (4) destroying, removing, or secreting documents and records related to the issues underlying the claims, assertions, and causes of action set forth in this lawsuit.

58. The requested temporary injunction will allow the maintenance of the status quo until the date of the resolution of this matter.

***APPLICATION FOR PERMANENT INJUNCTION***

59. Plaintiffs incorporate and reallege the factual assertions contained in paragraphs 12 through 58 above as though fully set forth herein.

60. Plaintiffs request that this Court enter a permanent injunction at the final trial of this lawsuit to fully protect Plaintiffs' rights. Defendants should show cause, if any, why this Court should not enter a permanent injunction to fully protect Plaintiffs' rights.

61. Plaintiffs are in an extraordinary situation in that they have no adequate remedy at law or otherwise to prevent the irreparable harm or damage that may occur unless Defendants are immediately restrained from engaging in the conduct cited herein. In order to prevent imminent and irreparable injury to Plaintiffs' vested rights, the Court should grant a Permanent Injunction. Therefore, Plaintiffs request that this Court issue a permanent injunction:

- (a) extending the termination date of the Commitment Letter until such time as the Merger Agreement has closed;
- (b) restraining Defendants and their officers, agents, servants, employees, representatives, assigns and/or any other persons or entities acting on their behalf or in concert or participation with them from directly or indirectly doing, any of the following:
  - (1) interfering in any way with the consummation of the Merger Agreement, including, but not limited to:
    - (A) interfering with or thwarting consummation of the Merger Agreement by refusing to fund the Merger transaction as agreed in the Commitment Letter;
    - (B) interfering with or thwarting consummation of the Merger Agreement by declaring termination, failure, nullity, expiration or other fatality of the Commitment Letter or any corresponding agreement, including the Merger Agreement regardless of any termination or expiration provisions set forth therein;

- (C) interfering with or thwarting consummation of the Merger Agreement by refusing to act in good faith in the drafting of definitive loan documents as agreed in the Commitment Letter;
  - (D) interfering with or thwarting consummation of the Merger Agreement by violating the terms of the Commitment Letter and/or by insisting on terms, provisions, and/or concessions inconsistent with the terms of the Commitment Letter and the Defendants prior representations and presentations;
  - (E) depleting funds available for purposes of the Merger;
- (2) negotiating, entering into, canceling, altering, or modifying any oral or written contracts, agreements, understandings, or arrangements, which conduct would operate to modify, compromise, jeopardize, sabotage, undermine, nullify, void, terminate, eliminate, hinder, or obstruct consummation of the Merger Agreement and/or funding under terms of the Commitment Letter;
- (3) engaging in any other conduct that would operate to modify, compromise, jeopardize, sabotage, undermine, nullify, void, terminate, eliminate, hinder, or obstruct consummation of the Merger Agreement and/or funding under terms of the Commitment Letter; and

- (4) destroying, removing, or secreting documents and records related to the issues underlying the claims, assertions, and causes of action set forth in this lawsuit.

***REQUEST FOR EXPEDITED DISCOVERY***

62. Plaintiffs request that the Court order expedited discovery in this matter. Such an order is justified in that valuable time has already been lost due to Defendants' schemes and interference. Additional valuable time will be lost if the issues among the parties are not resolved in an expedited manner. Irreparable and immeasurable damages to Plaintiffs accrue on a daily and exponential basis.

63. Plaintiffs seek expedited discovery in connection with its efforts to illustrate and put an end to Defendants' acts of tortious interference and to thwart the accrual of additional damages. Because the Commitment Letter terminates on June 12, 2008, it is imperative that Defendants are required to immediately produce documents and witnesses for deposition so that Plaintiffs may gather additional evidence in support of their claims. Additionally, expedited discovery is warranted in that the parties may have the ability to resurrect and consummate the Merger if the issues among the parties are brought to a prompt resolution.

***PLAINTIFF'S REQUEST FOR AN EXPEDITED TRIAL SETTING***

64. Because the Merger is at a critical stage and may terminate in weeks if this matter is not resolved prior to that time – resulting in incalculable and immeasurable injury to the Plaintiffs – Plaintiffs request that the Court set this matter for an expedited jury trial to begin not later than May 12, 2008. A setting on or before that date will ensure that the trial will be concluded *before* the Merger Agreement expires by its own terms.

***JURY DEMAND***

65. Plaintiffs demand, and have not waived, their right to have trial by jury in this matter.

***ATTORNEYS' FEES***

66. Plaintiffs request an award to the full extent allowed by law for attorneys' fees incurred in the prosecution of this lawsuit.

WHEREFORE, Plaintiffs Clear Channel Communication, Inc. and CC Media Holdings, Inc. prays that upon trial of the matter, they have and recover judgment against each of the Defendants herein as follows:

- (a) temporary restraining order;
- (b) temporary injunction;
- (c) permanent injunction; or, in the alternative,
- (d) actual, consequential, and special damages in excess of \$26 billion;
- (e) exemplary damages;
- (f) costs and attorneys' fees as allowed by law;
- (g) prejudgment interest;
- (h) post-judgment interest and other interest as allowed by law; and
- (i) all further relief, in law or in equity, that Plaintiffs may be entitled to receive.

Respectfully submitted,

Joseph D. Jamail, Jr.  
State Bar No. 10536000  
**JAMAIL & KOLIUS**  
One Allen Center, Suite 3434  
500 Dallas Street  
Houston, Texas 77002  
(713) 651-3000 telephone  
(713) 651-1957 facsimile

OF COUNSEL TO CLEAR  
CHANNEL COMMUNICATIONS, INC.

---

David J. Beck  
State Bar No. 00000070  
**BECK, REDDEN & SECREST, L.L.P.**  
One Houston Center  
1221 McKinney Street, Suite 4500  
Houston, Texas 77010  
(713) 951-3700 telephone  
(713) 951-3720 facsimile

ATTORNEYS FOR CLEAR CHANNEL COMMUNICATIONS,  
INC. AGAINST CITIGROUP GLOBAL MARKETS, INC.;  
CITICORP USA, INC; CITICORP NORTH AMERICA, INC.;  
CREDIT SUISSE SECURITIES USA, LLC; RBS SECURITIES  
CORPORATION; WACHOVIA INVESTMENT HOLDINGS,  
LLC; WACHOVIA CAPITAL MARKETS, LLC; AND  
DEUTSCHE BANK SECURITIES INC.

---

Ricardo G. Cedillo  
State Bar No. 04043600  
Les J. Strieber, III  
State Bar No. 19398000  
**DAVIS, CEDILLO & MENDOZA, INC.**  
McCombs Plaza, Suite 500  
755 E. Mulberry Avenue  
San Antonio, Texas 78212  
210.822.6666 telephone  
210.822.1151 facsimile

ATTORNEYS FOR CLEAR CHANNEL COMMUNICATIONS,  
INC. AGAINST MORGAN STANLEY SENIOR FUNDING, INC.

---

Robin C. Gibbs  
State Bar No. 07853000  
Kathy D. Patrick  
State Bar No. 15581400  
**GIBBS & BRUNS, L.L.P.**  
1100 Louisiana, Suite 5300  
Houston, TX 77002  
713-650-8805 telephone  
713-750-0903 facsimile

ATTORNEYS FOR CC MEDIA HOLDINGS, INC. AGAINST  
CITIGROUP GLOBAL MARKETS, INC.; CITICORP USA,  
INC; CITICORP NORTH AMERICA, INC.; MORGAN  
STANLEY SENIOR FUNDING, INC.; CREDIT SUISSE  
SECURITIES USA, LLC; RBS SECURITIES  
CORPORATION; AND DEUTSCHE BANK SECURITIES INC.

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Jacks C. Nickens, Jr.  
State Bar No. 15013800  
Thomas M. Farrell  
State Bar No. 06839250  
**NICKENS KEETON LAWLESS FARRELL & FLACK LLP**  
600 Travis Street, Suite 7500  
Houston, Texas 77002  
(713) 571-9191 telephone  
(713) 571-9652 facsimile

ATTORNEYS FOR CC MEDIA HOLDINGS, INC. AGAINST  
WACHOVIA INVESTMENT HOLDINGS, LLC; AND  
WACHOVIA CAPITAL MARKETS, LLC