

WABC

American Broadcasting Company

House
Contact: Jack Hoops

a Division of American Broadcasting-Paramount Theatres, Inc.

(1)

LOCAL FACILITIES CONTRACT

Agreement made at New York, N. Y. this 3rd day of September, 1958, between AMERICAN BROADCASTING COMPANY, a Division of American Broadcasting-Paramount Theatres, Inc., called "Company", and Barracuda Music, Inc. called "Advertiser" broadcast over radio station WABC, programs, including announcements advertising

Production of Stage Show of Barracuda Music, Inc.
(Product(s)) (Advertiser)

BROADCAST DAYS	APPROXIMATE BROADCAST HOUR(S) LOCAL TIME	FIRST B'CAST	LAST B'CAST	TOTAL NO. B'CAST	RATE BRACKET
Sat.	Sat 7:00-7:25 PM	8/27/58	9/6/58	Appx. 100x (Up to 10 annets. per night)	
Mon. through Fri.	" 7:15-7:25 PM				
Mon. through Sat.	" 7:30-7:55 PM				
Mon. through Sat.	" 8:00-8:25 PM				
Mon. through Sat.	" 8:30-8:55 PM				
Mon. through Sat.	" 9:00-9:25 PM				
Mon. through Sat.	" 9:30-9:55 PM				
Sat.	" 10:00-10:25 PM				
Mon. through Fri.	" 10:05-10:25 PM				
Mon. through Sat.	" 10:30-10:55 PM				

* WABC is to be paid ten percent (10%) of the net profits of engagement of Alan Freed at Brooklyn Fox Theatre between August 29 and September 6, 1958, said profits to be substantiated by Certified Public Accountant's Statement.

PROGRAM DESCRIPTION & ARRANGEMENTS	ADDITIONAL CHARGES
Participations in "Alan Freed Show"	Remote Origination at Brooklyn Fox Theatre 8/29/58-9/6/58 - \$2,300.00

ALLOWABLE DISCOUNTS & REBATES	GROSS	PER BROADCAST	NET
		*	
	TOTAL		

GRAND JURY EXHIBIT No. 362
MAY 8 1960

If this contract is with an Advertiser, references to Agency apply to Advertiser except no agency commission will be allowed an Advertiser. The provisions on the reverse side are part of this contract.

American Broadcasting Company
a Division of American Broadcasting-Paramount Theatres, Inc.

BARRACUDA MUSIC, INC. (Agency)
BARRACUDA MUSIC, INC. (Advertiser)

39 West 66th Street, New York, N. Y.
By Ben Hoberman
B-SD-74A Ben Hoberman, General Manager

1619 Broadway, New York, N. Y.
By Jack Hoops

1. **COMPANY UNDERTAKING:** Company will cause the station to broadcast the programs mentioned herein, on the day(s) and approximate hourly time(s) specified herein. Company will furnish a studio which in its opinion is suitable for performance of such programs. If studio performance is required, but it may change studio assignments at its discretion. In conformity with its rules, Company, upon request and without additional charge, will furnish the advisory services of its Program Department. Company encourages station use for audience mail purposes but it will not be liable respecting such mail addressed to it for forwarding or for use or benefit of Agency or Advertiser.

2. **INTERRUPTIONS AND APPROPRIATIONS:** A. The failure of Company to broadcast all or part of any program over the station due to an Act of God, Federal, State or Municipal law, governmental regulation or order, defect or breakdown of lines or equipment, a labor dispute, appropriation of whole or part of program time as to the station for broadcasting an event deemed by Company to be of public importance, or for any cause beyond the control of Company, shall not constitute a breach of this contract or vest in Agency any right to terminate this contract or recover damages and in such instances the time charges will be proportionately reduced. B. Company will endeavor to give as much advance notice as possible of any appropriation of program time for broadcasting an event of public importance and except where Agency otherwise directs, will make such courtesy announcements as the circumstances reasonably permit. If the notice of appropriation of part of a program period is given before the regular starting hour of the program period, then Agency, by notice given forthwith to Company, may cancel the remaining part of the period. In such instances where Company appropriates all of a program period for broadcasting such event Company will pay to Agency only its out-of-pocket live talent costs necessarily paid as to such program period upon submission by Agency of a certified detailed statement of such costs. Interruptions and appropriations hereunder will not affect rates of discounts or rebate allowances.

3. **PAYMENTS AND RATE PROTECTION:** Company will bill Agency weekly and broadcast charges shall be payable by Agency on 15th of month following that of broadcast. If this contract is with a recognized advertising agency, an agency commission of 15% will be allowed on gross billings less applicable rebates and discounts as herein shown. Payments hereunder shall be in lawful money of the United States and date of payment is material. Broadcast time for which bills are rendered shall be in agreement with the log of the station. Agency agrees not to rebate to Advertiser any agency commission allowed to Agency hereunder and will refund to Company any unearned commission paid to it. Except as to Company built programs, social security tax obligations as to live talent on programs broadcast hereunder shall, as between Agency and Company, be assumed by Agency. A rate decrease as to the station shall apply hereto as of its effective date publicly announced by Company and a rate increase as of six months from its effective date publicly announced by Company.

4. **TIME CHANGE — TERMINATION:** A. Company reserves the right to change the day or time, or both, of broadcasts as to (a) independent and station break announcements and service features of less than five minutes, if the time is desired by Company for any purpose, oral or written notice of such change to be effective on not less than 24 hours' notice to Agency and (b) program of five minutes or longer (including cooperative features), if the time is desired by Company for network broadcasting, written notice of change to be effective as of date specified in the notice, but not less than 28 days after day of mailing or delivery of the notice. If the time to which Company proposes to make any change hereunder is not agreeable to Agency and another time is not agreed upon in writing, the periods specified in Company's notice of change will be cancelled automatically as of the effective date specified in said notice. If more than one-third ($\frac{1}{3}$) of the periods in any weekly schedule of the same program series are cancelled, Agency may cancel the remaining periods in said program series as of the effective date specified in Company's notice of change. B. In the event one or more of the periods provided for herein are cancelled or the entire contract is terminated in accordance with sub-paragraph A above, the frequency rate applicable hereunder and under other combinable contracts, if any, of Advertiser shall be determined on the assumption that the cancelled periods have been broadcast during the balance of the firm portion of this contract following the effective date specified in Company's notice of change or the effective date of termination. If this contract provides that Agency, by giving a stipulated amount of notice, may terminate it effective at any time other than as of specified dates or the end of specified cycles, the firm portion of this contract shall be determined for the purposes of this sub-paragraph as though such right of termination were exercisable by Agency effective at the end of any 13-week cycle. C. **THIS CONTRACT MAY BE TERMINATED FOR REA-**

SONS OTHER THAN THOSE CONTAINED IN SUB-PARAGRAPH A ABOVE BY EITHER PARTY BY GIVING THE OTHER TWENTY-EIGHT (28) DAYS PRIOR WRITTEN NOTICE; PROVIDED THAT NO SUCH NOTICE SHALL BE EFFECTIVE UNTIL TWENTY-EIGHT (28) DAYS AFTER START OF BROADCASTS HEREUNDER. IT IS PROVIDED FURTHER THAT THIS CONTRACT INsofar AS IT COVERS BROADCASTS OF LESS THAN FIVE MINUTES DURATION, MAY BE TERMINATED BY EITHER PARTY GIVING THE OTHER FOURTEEN (14) DAYS PRIOR WRITTEN NOTICE, BUT NO SUCH NOTICE SHALL BE EFFECTIVE UNTIL FOURTEEN (14) DAYS AFTER THE START OF BROADCASTS HEREUNDER. If Agency so terminates this contract it will pay Company at earned rate according to Company's rate card, on which this contract is based. If Company so terminates this contract, Agency will pay Company according to the rates specified herein for all broadcasts previously made by Company; that is: Agency shall have the benefit of the same discounts which Agency would have earned had it been allowed to complete the contract.

5. **MATERIAL, TALENT AND COMMERCIAL ANNOUNCEMENTS:** A. Unless otherwise provided by contract between Company and Agency, the material, talent and announcements for each program will be furnished by and at the expense of Agency. Such material, talent and announcements must conform to the program and operating policies of Company. B. At least forty-eight hours (exclusive of Sundays and legal holidays) before the starting hour of any program, the continuity for that program including commercial announcements must be delivered to Company and Company will have the continuing right to edit and modify such continuity to the extent it deems necessary to make same conform to the public interest and Company program and operating policies. Unless waived in writing by Company, only the products listed herein shall be advertised in broadcasts hereunder.

6. **DEFENSE AND INDEMNIFICATION:** A. Any litigation against Agency or Advertiser, or the employees of either, brought to enforce the rights of any third party alleged to have been violated by or in connection with broadcasts, or preparation thereof, of matter described herein as Company material will be defended by and at the expense of Company. Any litigation against Company or any licensee of the station, or the employees of either, brought to enforce the rights of any third party alleged to have been violated by or in connection with broadcasts, or preparation thereof, of matter described herein as Agency material will be defended by and at the expense of Agency. B. The indemnitor (party hereto on whom duty or defense is imposed hereunder) will have full and complete control of such litigation and may settle, compromise and adjust the same. The indemnitor will be responsible for the payment of any judgment for damages and costs rendered in such litigation against the indemnitee(s) and will indemnify and hold the indemnitee(s) harmless from loss or damage caused by or arising out of any such judgment. C. Sub-paragraphs A and B hereof will be effective only in the event that (1) within five days after the initial summons or process is served upon the indemnitee written notice thereof is given to the indemnitor and within five days thereafter a written request to defend such litigation is mailed or delivered to indemnitor and (2) from time to time during the pendency of such litigation and after the duty of defense has been assumed by the indemnitor, the indemnitee, upon request, shall disclose to the indemnitor all relevant facts in the possession or under the control of the indemnitee by making available to the indemnitor for consultation and as witnesses at their customary places of business all employees and other persons under the control of the indemnitee having possession of such facts and by making available to the indemnitor all relevant documentary material in the possession or under the control of the indemnitee. D. Company material consists of copyrighted musical compositions performed in non-dramatic form in live talent programs and listed for the program on the official music sheets of Company and all material which Company furnishes for any live talent or electrically recorded program broadcast hereunder. Agency material is everything broadcast hereunder excepting Company material. Company approval of Agency material for broadcasting will not affect Agency's indemnity obligations under this contract. E. Notwithstanding the indemnitor shall have assumed the defense of any litigation hereunder, the indemnitee, upon relieving the indemnitor in writing of its obligations hereunder with respect to such litigation will have the right, if it shall so elect, thereafter to conduct the same at its expense by its own counsel.

7. **GENERAL PROVISIONS:** This contract is made subject to all Federal, State and Municipal laws and regulations now or hereafter in force, is not assignable without the consent of Company, constitutes the entire understanding between the parties, and shall be construed according to the laws of the State of New York. Waiver of any provision hereof in any instance will not constitute a general waiver of any right hereunder. This instrument is not binding on Company until executed by one of its duly authorized officers.