

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
The Petition for Class Waiver of FCC)
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Sponsorship Identification Requirements)
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Filed By the Radio Broadcasters Coalition)

MB Docket No. 15-52

**Comments of
Future of Music Coalition**

INTRODUCTION

Future of Music Coalition (FMC) respectfully submits the following comments to the FCC in its consideration of the waiver petition by the Radio Broadcasters Coalition to aggressively modify or eliminate the Sponsorship ID (SID) requirement. FMC is a national non-profit research, education, and advocacy, organization for musicians with an established history of documenting trends in the music industry, including commercial broadcast radio. FMC supports the interests of musicians, particularly independent artists, who have historically faced tremendous barriers in achieving commercial radio airplay. FMC also takes into consideration the interests of music fans, who have consistently demonstrated demand for content scarcely offered by commercial radio programmers.

FMC was founded a decade ago, with the recognition of profound changes that digital technology would have on the worlds of media and entertainment. The brunt of these changes

was borne by groups with significant investments in the distribution and sales of physical media — major record labels and music publishers, for example. This is not to suggest that radio broadcasters have not been impacted by the rapid influx of alternative listening options. However, multiple studies show that consolidation in commercial broadcast ownership has had a far greater impact on the radio sector. In fact, research conducted by FMC since the passage of the 1996 Telecommunications Act indicates that consolidation has not only reduced opportunities for independent and local artists to be heard on the public airwaves, it has also created the conditions through which payola—outright or managed via a middleman—is an inevitability.

Since 2002, FMC has published six major research studies that examined various aspects of radio in the wake of the 1996 Telecommunications Act. We have conducted detailed analyses on radio station ownership and market share, broadcast industry employment and wages, a content analysis of citizens’ comments filed during the 2002 proceeding, and the effectiveness of a 2007 voluntary agreement between the FCC and four major station group owners that was meant to curb structural payola. All of these documents and reports have been filed at the Commission during prior proceedings and are accessible via our website.¹

Our research has brought to light several important findings about the radio industry, some of which have been cited by FCC Commissioners and the courts.² Among the most significant: counting format names is an inadequate measure for format “diversity”; just fifteen formats make up 76 percent of commercial radio programming; the FCC’s signal contour market definition had allowed companies to exceed the ownership caps in 104 markets; and the 2007 payola consent decrees and Rules of Engagement have had little impact on musicians’ access to the airwaves.³

¹ All Future of Music Study’s have been archived on our website at <http://www.futureofmusic.org/research>

² Statements of FCC Commissioner Jonathan Adelstein at the Social Science Research Counsel Media Research Pre-Conference, (Jan 11, 2007).

³ DiCola, Peter. *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry*, [hereinafter *False Premises*] December (2006) p.4 at <http://www.futureofmusic.org/article/research/false-premises-false-promises>

FMC strongly supports the FCC's stated principles of localism, competition and diversity, and believes that the relaxing or elimination of the SID requirement will exacerbate commercial radio's already serious deficiencies with regard to the aforementioned principles. In these comments, FMC will outline why the bare minimum of on-air disclosure at the time of playing music for which promotional consideration was received is crucial to preserving any semblance of the public interest among the nation's top radio conglomerates.

STRUCTURAL PAYOLA IS AN EVER PRESENT DANGER

Investigations by the New York State Attorney General and the FCC from 2003-2007 confirm that Big Radio routinely broke rules prohibiting pay-to-play without disclosure. Clear Channel (Now rebranded iHeartMedia), CBS Radio, Entercom Communications, and Citadel Broadcasting Corporation agreed to pay 12.5 million dollars in 2007 for violating payola laws—a slap on the wrist for these multimillion-dollar corporations. That same year, the FCC brokered voluntary agreements between radio groups and major labels, an accord that was supposed to open the door for a wider range of music to be heard on the airwaves. As we demonstrate below, this has not happened in any statistically meaningful way.

In addition to consent decrees, these radio companies and the American Association of Independent Music (A2IM) crafted “Rules of Engagement” outlining best practices for lowering instances of payola and giving local, independent music access to airplay. Future of Music Coalition's oft-cited report, *Same Old Song*, analyzes the consent decrees' and Rules of Engagement's impact on structural payola. Using playlist data licensed from Mediaguide, we

examined four years of airplay— 2005-2008— from national playlists, and from seven specific music formats: AC, Urban AC, Active Rock, Country, CHR Pop, Triple A Commercial and Triple A Noncommercial. FMC looked at each playlist and calculated the “airplay share” for five different categories of record labels to determine whether the ratio of major label to non-major label airplay has changed over the past four years.

Same Old Song demonstrates the Consent Decrees and Rules of Engagement did not achieve their goal. There was very little measurable change in airplay share from 2005-2008. Although independent labels showed modest increases in airplay, these increases were mainly in Country and AAA Noncommercial formats. Such increases can be attributed to the sudden success of many independent-label country musicians, especially on Disney-owned labels, and the fact that Noncommercial AAA radio traditionally caters to local community music tastes. Overall, major label songs consistently secured 78 to 82 percent of airplay. Furthermore, FMC found in almost every format measured, more than 50 percent of playlist spins were of songs more than five years old. Relying on older hits decreases the number of slots available for new, local, up-and-coming talent. Although the study does not definitively suggest that the results indicate structural payola has not been eradicated, it certainly indicates that the FCC regulations regarding payola have not achieved their goals.

The elimination of the SID requirement would only undermine the FCC’s own policies, which are already difficult for the Commission to enforce (and for small nonprofits like ours to track). Therefore, the broadcasters petition is counter to the public interest and must be rejected by the FCC.

HARMS TO LOCALISM

We encourage the Commission to consider radio's ability to serve *local* communities when evaluating the merits of the broadcasters' waiver petition. It is no surprise that radio is facing enormous competitive pressure from other media sources—many of which are Internet-based and fast becoming accessible across the US. Still, radio's greatest asset is its power to target a local audience. This is something that the Internet does less well; therefore the FCC must uphold policies that reinforce commercial radio's commitment to localism by maintaining the on-air disclosure requirement. Without such stipulations, the airwaves will become even more hostile to local and independent voices due to a lack of community comprehension about how programming is selected.

Preventing structural payola is essential for promoting broadcast localism. Payola distorts radio playlists and allows airwave access based on financial backing and business relationships rather than talent. Local artists often do not have the same financial backing as major label superstars. Moreover, payola incentivizes DJs to pick playlists based on the preferences of large recording industry conglomerates instead of the tastes of the local community. Payola, therefore, is antithetical to localism and the FCC must more aggressively combat this insidious practice. *Same Old Song* confronts the practical challenge in measuring the effectiveness of the policies negotiated by the FCC, broadcasters and the independent music community. The ambiguous language of the Rules of Engagement and the voluntary agreements make it difficult to set specific policy goals and effectively measure outcomes. The report recommends that the FCC improve its data collection, refocus on localism and expand the number of voices on the public airwaves. We take this opportunity to reiterate prior recommendations.

BROADCASTERS SHOULD PROVIDE MORE INFORMATION ABOUT SPONSORED PROGRAMMING AS A MATTER OF POLICY

One of the claims that the Radio Broadcasters Coalition make in their waiver petition is that, by putting information about paid programming on their individual station websites, they are going beyond what is required by existing SID provisions. There is no way to assess the veracity of these claims; so-called “enhanced” disclosures from the broadcasters remain purely hypothetical, as to our knowledge, no station group has chosen to offer these data. Regardless of the amount or nature of information posted to individual station sites, it seems unlikely that the average radio listener will ever engage with this information in a meaningful way. Station sites are operated by individual broadcast affiliates, and are highly variable in their most fundamental utility. We are unconvinced that broadcasters will present information—however detailed—about sponsored content in a way that is easily encountered by the relatively small percentage of listeners who visit these online properties. In fact, the rise of “radio aggregator” apps such as TuneIn⁴ make it even less likely that those who consume content from the commercial radio conglomerates will interact with the static websites maintained by the individual stations. If there is an additional benefit to expanded disclosure on station sites, then this is something that the broadcasters are free to provide in addition to existing on-air requirements. In other words, no waiver is needed to experiment with added-value information regarding sponsored content. In addition to on-air disclosure at the time of airing sponsored content, broadcasters should voluntarily provide additional records of such arrangements in a permanent and easily searchable section of their

⁴ "TuneIn Website." TuneIn. N.p., n.d. Web. 10 Apr. 2015.

websites. However, this information should not supersede the baseline requirement of on-air disclosure at the time of airing sponsored content, as any such modification would be against the public interest and the FCC's stated goals of localism, competition and diversity.

ANY MODIFICATION OF SID REQUIREMENTS WOULD LEGITIMIZE PAYOLA

The existing SID requirements is all that stands between radio becoming a pay-to-play environment that subverts audience expectations and in a manner contrary to the public interest. For decades, radio listeners have tuned into stations because they had the sense that the DJs had access to the newest and best music. To many listeners—and many record labels—DJs were the ultimate tastemakers. Their ability to create a hit through repeated airplay gave them an extraordinary level of power. It was exactly this power to persuade audiences and generate sales that encouraged record labels and radio personalities to engage in the bribery that became better known as payola.

Although the power of radio to create hits has only slightly diminished, the power of the DJ has been drastically reduced. As station ownership consolidated in the 1990s, playlists became more streamlined in order to aggregate the widest possible range of listeners. Automation replaced the personal selection process, leaving DJs as little more than between-commercial announcers.

Today's typical commercial radio DJ has no input into what he or she plays on the radio, but that doesn't mean that labels have abandoned attempts to influence airplay. More recent versions of payola take place between program directors, station managers and "indie promoters."

Regardless of the specific recipient of the payola, the result is that listeners primarily hear only the songs released by the world's largest labels—those with the financial backing to participate

in a pay-for-play game—instead of songs that are chosen based on artistic merit. Without the SID requirement, any remaining pretense to competition and diversity on the public airwaves will be extinguished.

Even in an evolving media market with new metrics for success, radio airplay remains a significant barometer of a track or an artists' popularity. The relaxing of rules compelling the on-air disclosure of pay-for-play arrangements at the time of airplay would distort the charts and thereby impact the music industry well beyond the broadcast sector. It's not just about how radio airplay drives sales; radio airplay is a major factor in establishing an artist's legitimacy and "street value." When stations and labels engage in payola, it affects which songs are played on the air, and how frequently. This in turn impacts everything from record sales to the fees that an artist can command for live appearances. Payola is anticompetitive and grossly unfair to artists who could potentially be as successful, were airplay based solely on artistic merit or audience demand. At the very least, such pay-for-play arrangements should be publicly disclosed at the time of airplay, as is currently the rule.

The SID requirement hardly poses a barrier to radio conglomerates' ability to make money from programming. In fact, US broadcasters already enjoy a statutory exemption allowing them to play music without having to pay a dime to sound recording owners or performers. The government grants radio station licenses for free, with the understanding that stations operate "in the public interest." Stations are commercial companies and are entitled to earn a profit, but just as newspapers separate their advertising and editorial departments, radio stations are expected and required to separate their advertising and programming divisions. By engaging in payola,

stations are not living up to the public interest standards that are part of their responsibilities as licensees of the public airwaves. Any relaxing of the on-air disclosure requirements for sponsored content would allow large commercial broadcasters another way to generate profits while ducking the most basic of obligations to serve the public interest as well as the local communities in which their stations operate.

CONCLUSION

Future of Music Coalition applauds the Commission for taking this matter seriously and soliciting public comment. We feel strongly that an examination of the record will demonstrate that the broadcasters' waiver request is counter to the public interest and deleterious to the broader music industry. We look forward to the FCC upholding the SID requirements to uphold your commitments to localism, competition and diversity on the American airwaves and offer our organization as a resource in this or any other matter pertaining to the vibrancy and sustainability of over-the-air radio.

Respectfully Submitted,

Casey Rae

CEO

Future of Music Coalition