

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Digital Audio Broadcasting Systems And)	MM Docket No. 99-325
Their Impact on the Terrestrial Radio)	
Broadcast Service)	
)	

**COMMENTS OF
AMERICAN FEDERATION OF MUSICIANS,
AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, and
FUTURE OF MUSIC COALITION**

Michael Bracy
Director, Government Relations
Future of Music Coalition
1615 L St NW, Suite 520
Washington, DC 20036
202 331 2958
mbracy@bracytuckerbrown.com

Ann Chaitovitz
National Director of Sound Recordings
AFTRA
1801 K Street, NW, Suite 203L
Washington, DC 20006
202 223 1235
fax 202 223 1237
achaitov@aftra.com

Patricia Polach
Council for American Federation of
Musicians for the United States and Canada
Bredhoff & Kaiser
805 15th St NW Suite 1000
Washington, DC 20005
202 842 2600
ppolach@bredhoff.com

June 16, 2004

The Federal Communications Commission has requested further comment and raised important questions regarding the transition of the terrestrial broadcast radio from an analog to a digital service. As organizations that represent recording artists, musicians and citizens, we submit these comments in the public record to highlight our fundamental concerns.

The FCC is well aware of the position held by our organizations (and many others): We believe that over-the-air broadcast radio has been transformed and damaged by the relaxation of ownership restrictions and by a lack of regulatory oversight. This transformation has resulted in radical consolidation of the radio bandwidth, which has allowed a small number of massive station groups to exert unhealthy control over commercial radio. Over the past five years, our organizations have testified before the Congress, FCC and Copyright Office on these issues; we've filed public comments; issued joint statements; published editorials; held conferences; given speeches and circulated petitions. These activities have been widely covered in the media and have been acknowledged by policymakers at many levels.

It is our opinion that the transformation of the terrestrial broadcast from an analog to a digital service cannot take place in a void, but must be viewed in the context of this well-documented environment of extreme consolidation. Localism, Competition and Diversity are essential policy goals that must be at the forefront of any migration to digital broadcasting. At a minimum, the FCC must address and reconcile the incumbent broadcasters' questionable record in fulfilling these traditional regulatory goals before granting them expanded rights to multicast or integrate data or subscription services. Fair technology standards can only develop with active participation from all of the various stakeholder communities who have legitimate interests in the future of this valuable public resource. As recording artists, musicians and fans, we therefore request a role that goes beyond our right to submit comments into the record.

Digital Audio Broadcasting has the potential to reinvigorate and expand radio through innovative technologies that increase capacity and improve signal quality.

Recording artists, musicians and fans are clearly very excited by the potential for digital radio, but this expansion will not reach its true potential if it is simply reduced to a process of perpetuating the status quo by allowing incumbent broadcasters to supplement their existing licenses with the addition of multicasting, data services and subscription services.

Broadcasters have built their industry out of the creativity and labor of recording artists. Consumer equipment manufacturers are establishing a parallel industry based on consumer demand to access the creative works of the music community. When the essential decisions that will shape the future of this critical national resource are being determined, artists and citizens must be at the table, yet they rarely are.

It is crucial that we build more equitable radio models. Because of a grave injustice in US law, broadcasters are allowed to build their business by selling to advertisers the fans that our recordings attract, and yet the broadcasters do not pay compensation for broadcasting the recording. This means neither the record company who invests nor the performing artists who play instruments or sing and bring the song to life receive compensation when their recordings are broadcast. Record labels and performing artists do receive compensation when their recordings are broadcast in Europe and Canada. Due to the limits of American law, however, American performers are also denied payment for radio play in these other countries because our broadcasters do not pay when they broadcast recordings.

All artist groups are united in these documented concerns about today's radio marketplace. Additionally, some artist groups, including AFM and AFTRA, are concerned about the potential risk that digital radio receivers will be programmable to search for and download material to hard drives and portable devices, and eliminate the need for the users to purchase physical product or downloads or subscribe to licensed services. We must ensure that digital radio does not cut into one of the recording artists' few legitimate income streams without additional compensation. That said, we are optimistic that together we can design a technology that will contribute to our ability to

create and experience music, while at the same time compensating creators and performers for our work.

The American music community has expressed outrage about the state of the radio industry today. We've talked about the disappearance of entire segments of our culture from commercial radio (jazz, blues, classical, bluegrass, zydeco, big band, etc). We've talked about a "marketplace" created by federal policies that limits access for local and independent artists and makes it extraordinarily difficult for independent stations to survive. We've talked about the fundamental unfairness of commercial broadcasters' ability to dodge payment of a performance royalty. We've talked about the need to strengthen and expand community voices, including Low Power Radio.

The FCC has recognized the importance of many of these questions, both through the creation and proposed expansion of community based Low Power FM radio stations and the work of the Localism Task Force, which has announced its intent to issue a Notice of Inquiry into localism in broadcasting. But it would be a significant mistake to move forward on a regulatory framework for Digital Audio Broadcasting without addressing some of the following questions about the existing marketplace:

1. What has been the impact of the radical restructuring of radio station ownership on the traditional regulatory priorities of Localism, Competition and Diversity?
2. To what extent are local and independent recording artists and musicians denied a legitimate opportunity to gain airplay on locally-licensed commercial radio stations?
3. Are allegations of a structural system of "pay for play" a myth or a marketplace reality?
4. How does the FCC plan on resolving the fundamental disagreement between the NAB, which claims that radio consolidation has led to more formats, and

therefore more diversity, and the artist community, which claims that radio consolidation has had a devastating impact on local access to commercial airwaves, diversity of types of music found on the radio and the ability for small, independent stations to compete in the marketplace?

5. How can it be that the FM band is at once alleged to be too crowded to support 100 watt LPFM stations on third adjacent channels, but robust enough to support implementation of expanded digital services, including multicasting and data services?
6. How would the authorization of such new capacities as multi-casting and digital subscription radio compete with the emerging digital music services such as non-interactive webcasting, interactive digital subscription services like Rhapsody, and digital satellite radio, and how would that competition impact artists in light of the fact that these latter services compensate performers for the use of their recorded work but the FCC-licensed terrestrial radio stations do not?

The data to answer most of these questions are available but, in most cases, privately held. The FCC needs to once and for all close the data gap that limits their ability to understand and contextualize what is happening in the radio marketplace and they must make crucial data available to the artist and public representatives.

The music community is desperate for access to the public airwaves. Citizens share the same interest in widely enhanced content choices. Because of this, the implementation of Digital Audio Broadcasting has the potential to be a widely positive development. The technology is exciting, as is the vision of National Public Radio's "Tomorrow Radio" initiative. We recognize that implementing DAB is a difficult task, but certainly one the FCC can handle.

Over the next month, we look forward to evaluating the comments filed and participating actively in the reply phase. We echo many of the concerns outlined by the

Public Interest Coalition and are eager to draw connections between the experience of the music community and other stakeholders who share concerns about access to the airwaves. We are eager to debate the impact of digital radio on the compensated exploitations of recordings.

This is a very exciting time. The FCC has a historic opportunity to ensure that Digital Audio Broadcasting reinvigorates radio and maximizes this critical natural resource for the good of the public. This vision will only be fulfilled if the FCC demonstrates a willingness to acknowledge the structural problems inherent in today's analog marketplace as it moves ahead in the implementation of digital radio. It also requires a commitment to develop a technical standard and regulatory framework that benefits **all** stakeholders. This responsibility goes well beyond delegating the task to industries whose primary motives are economic profit and must include examining the cultural, artistic and public service potential presented by the technology and additional spectrum opportunities. We appreciate this opportunity to file comments and we look forward to a future where digital radio serves recording artists, musicians, industry and the public.