

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	MB Docket No. 15-52
Petition for a class waiver of the Commissions’)	
)	
sponsorship identification requirements filed by)	
)	
the radio broadcasters’ coalition)	
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)	
)	

COMMENTS OF THE RECORDING INDUSTRY ASSOCIATION OF AMERICA

The Recording Industry Association of America (“RIAA”) respectfully offers these comments in response to the March 13, 2015 request for comments (“RFC”) in the above-captioned proceeding regarding a petition for a class waiver of the Commission’s sponsorship identification requirement.

The RIAA is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members are the music labels that comprise the most vibrant record industry in the world and that are the engines of investment that provide the ‘rocket fuel’ that propels the broader music marketplace. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States. In support of its mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conducts consumer, industry and technical research; and monitors and reviews state and federal laws, regulations and policies.

We believe the petition should be denied because it is not in the public interest. Certainly, providing enhanced sponsorship disclosures on the Internet is a helpful addition to current disclosure requirements, and it should be encouraged. However, it is no substitute for having on-air disclosure at or quite near the time of the relevant broadcast.

The purpose of the disclosure rules is to inform the public when programming has been sponsored, and by whom, in order to provide for transparency. As the FCC has noted, the public is entitled to know who seeks to persuade them. The disclosure rules also provide transparency that the radio station has chosen to profit from the sponsored programming beyond its profits from advertising revenues. This transparency is diminished, not heightened, when the public is not informed at or quite near the time of the broadcast of the sponsorship in the same medium in which the broadcast is provided, but rather is forced to actively hunt for such information in another medium. Not only does this put an unfair burden on the public, it is unrealistic to think that consumers will actually expend the time or effort to log onto a broadcaster's website to access the disclosures, particularly those who listen to the radio in their cars.¹

This is particularly true when the "once a day" on-air notice proposed in the petition excludes critical information. Note that the example "once a day" notice proposed by the broadcasters states: "Some of the music [and/or] sports programming that you hear on this station is sponsored by [or paid for] by Interscope, Sony, Universal Records, or the Washington Nationals. For additional information, please visit our website at www.wxyz.com or contact the station at" This does not tell the public (i) what specific programming was paid for, (ii) who paid for what programming, and (iii) when such programming aired. It also leaves to chance whether the user that heard the sponsored material would ever hear the vague announcement about that programming if it airs much later that day.

Because the proposal is highly likely to cause less, not more, of the public to know about otherwise invisible sponsorships, it would undermine the entire intent of the law. Allowing a small segment of the public to learn once a day only that a broadcaster received some promotional consideration

¹ The evidence cited in the petition is not relevant, as it goes to website visits after an advertisement for a product or service, which is not what is contemplated here. Enticing a user to visit a webpage in an on-air advertisement for a product or service that is of interest to them is very different from a vague announcement about unidentified programming that occurred sometime earlier in the day. Also, the fact that an ad campaign lasts for a limited time has no bearing on the proper amount of time for an educational campaign. In addition, information about the ubiquity of the Internet is not relevant. The issue is not whether consumers have access to the Internet. The issue is transparency and ensuring that the public knows about the sponsorship.

from someone for some programming played that day does nothing to further transparency or increase the amount of useful information received by the public. Contrary to the broadcasters' statements, this proposal is not in the public interest.

Moreover, permitting broadcasters to create roadblocks to effective transparency may give them greater incentive to unfairly demand free labor from artists to promote the radio station and/or to unfairly demand payment from record labels to have particular music played on the station. This unfairness has been well documented.² The proposed waiver would help broadcasters hide such unfair practices by shining less light on when they receive compensation. It would also help them create further market distortions that benefit themselves. Having effective rules that make such behavior transparent to the public helps guard against such abuse of market power.

If the Commission desires to consider the waiver, before it responds, it should first require that the broadcasters provide evidence that a large portion of the listening public would actually visit any enhanced online disclosure page. This could be done, for example, by requiring that the broadcasters both follow the existing sponsorship requirements and provide the enhanced online disclosures contemplated and monitor the traffic to the enhanced online disclosure pages. As part of that effort, the broadcasters should be required to produce conclusive evidence that the amount of such traffic, in both absolute terms and in comparison to the amount of traffic that the broadcasters' home page receives generally, justifies the waiver. If that threshold is met, the Commission should then consider the impact such limited disclosure would have on unfair competition practices by broadcasters, such as noted above, and, if it determines to provide any sort of waiver, the Commission should ensure that any waiver requires broadcasters to take action to prevent such unfair practices.

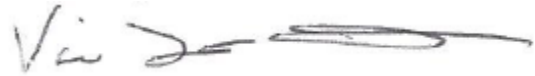
² See, e.g., *Artist Groups Deliver "Joint Statement On Current Issues in Radio" to FCC and Congress, May 22, 2002*, available at <https://futureofmusic.org/press/press-releases/artist-groups-deliver-joint-statement-current-issues-radio-fcc-and-congress>; *Statement of U.S. Senator Russ Feingold on the Radio and Concert Disclosure and Competition Act of 2005*, Nov. 20, 2005, available at http://www.mi2n.com/press.php3?ej=md&press_nb=85177; *Request for Declaratory Relief Regarding Actions Contrary to the Public Interest by Certain Radio Broadcasters* filed by the MusicFIRST Coalition with the FCC on June 6, 2009.

In considering this, the Commission should also be mindful of the fact that the broadcasters already receive a disproportionate subsidy concerning sound recordings that is impossible to justify in the modern age. Specifically broadcasters do not pay a royalty for sound recordings they perform over the terrestrial air waves – the same sound recordings that drive their large and profitable audiences. This inequity should be corrected by Congress. But the Commission should not give broadcasters a further advantage by granting them the waiver they have requested.

Respectfully submitted,

RECORDING INDUSTRY ASSOCIATION OF
AMERICA.

By:



Victoria Sheckler
Senior Vice President,
Deputy General Counsel
Recording Industry Association of
America

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