Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of	)	
	)	
The Petition for Class Waiver of FCC	)	
	)	
Sponsorship Identification Requirements	)	
	)	
Filed By the Radio Broadcasters Coalition	)	MB Docket No. 15-52

Comments of
Future of Music Coalition

Future of Music Coalition (FMC) respectfully submits the following reply comments to the FCC in its consideration of the waiver petition by the Radio Broadcasters Coalition to 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.

In reviewing the comments submitted to this docket thus far, we are encouraged that the vast majority of filings call for the Commission to reject the broadcasters' request for a SID waiver.

We are equally pleased to see that this majority includes individual musicians, record labels, music industry trade associations, advocacy organizations and fans. Even a cursory examination of the comments reveals clear consensus that an SID waiver would result in the legitimizing of payola and make commercial broadcast radio even more hostile to independent and local music.

Notably, it isn't just the independent community who are calling upon the FCC to reject the broadcasters' petition. The Recording Industry Association of America (RIAA), whose constituency includes the three major record labels, also calls for the Commission to uphold the current disclosure requirements. This is perhaps because the major labels are the ones who bear a capital burden due to the fact that they alone possess the necessary resources to indulge broadcasters' pay-to-play schemes; independent labels and artists are simply unable to ante up. Excluding competition based on an ability to pay may have boosted major label record sales in the past, but in today's marketplace, where streaming is beginning to overtake physical media and even downloads, the costs likely outweigh any remaining benefits. Though major labels historically enjoyed the advantages of institutional payola, they have also consistently demonstrated resistance to the practice. In fact, the majors were among the co-signers (along with FMC) of a 2002 letter to Congress outlining the negative impacts of the so-called "independent promoter" system.[1] Regardless of the current motivations of the major labels in rejecting the broadcasters' SID waiver request, we agree completely with their assessment that[2]:

> "…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

[1] D., Davey. "Letter to the FCC About Radio Consolidation and Payola." Letter to the FCC About Radio Consolidation and Payola. Hip Hop & Politics, 22 May 2002. Web. 12 May 2015.
[2] Sheckler, Victoria. *MB Docket No. 15-52*. Comments of the Recording Industry Association of America. *Federal Communications Commission ECFS*. Web. 11 May 2015.

> 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.
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> "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 independent label community, as represented by the trade group the American Association of Independent Music (A2IM), has fundamental disagreements with the major labels around issues related to market share. On the matter of the SID requirement, however, A2IM and the majors are in harmony, though the independents' rationale is more closely tied to audience expectation and access to the airwaves. According to A2IM[3]:

> "The public has the expectation that radio stations play what is culturally relevant, not what is simply bought and paid for by advertisers. This is consistent with consumer expectations about what programming sponsorship means in other media…
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> "…Historically, "pay for play" has created an uneven playing field in soliciting airplay. As Small and Medium-sized enterprises (SMEs), Independent labels could not afford the tolls required to get adds or spins on popular stations."

For its part, the National Academy of Recording Arts and Sciences (NARAS) highlights current debates around the value of music, noting that AM/FM radio continues to enjoy a market-distorting exemption in US copyright law that denies performers and sound recording owners a performance right—a loophole that not only means that American performers are unable to receive compensation from domestic radio airplay, but also means they are unable to collect money owned from overseas played, even though nearly every other developed nation on the planet respects this essential right. As NARAS rightly points out:

> "Waiving the Sponsorship Identification ("SID") requirements, as requested by the Radio Broadcasters Coalition, would clearly decrease transparency. But in addition, the request before the Commission is just one small piece of the larger issue of how we determine the

[3] Bengloff, Richard. *MB Docket No. 15-52*. Comments of the American Association of Independent Music. *Federal Communications Commission ECFS*. Web. 11 May 2015.

value of music. As The Recording Academy has noted to the Commission previously, AM/FM radio broadcasters benefit from a loophole in the federal copyright law and pay nothing for the use of the sound recordings that fuel their billion-dollar businesses. So while other radio services such as Internet radio, satellite radio, and cable radio all pay to license music, terrestrial radio broadcasters are under no obligation to pay for music. Meanwhile, as consumer preferences for listening to music continue to shift away from traditional radio to new digital formats, the promotional value of music on the radio dwindles."

The Law Offices of Rachel Stilwell, filing on behalf of Chicago-based radio programming consultancy Gray Communications, underscores the importance of the disclosure requirement as pertains to the airplay of a specific piece of music so that listeners have a clear and immediate understanding of what is sponsored content. Gray Communications argues that[4]:

> "Granting the requested waiver would eviscerate the most important protections against undisclosed payola that now exists. Broadcast sponsorship identification requirements are among the oldest statutory provisions dealing with broadcast advertising, for good reason.
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> "Under 47 C.F.R. § 73.1212(a)(2)(ii), broadcasters are required to disclose in their on-air announcements the true identity of the person or entity that paid for the sponsored content. 47 C.F.R. § 73.1212(a) (*i.e*., the very first sentence of 47 C.F.R. § 73.1212) states that such announcements must be at the time the sponsored content is broadcast.3 The way that the different parts of 47 C.F.R. § 73.1212(a) currently work together ensures that radio listeners will know, when they hear a radio station play an entire recorded song for which airplay was purchased, that it was *that particular recorded song* which was the subject of a payola transaction."

Individual artists have also filed in considerable numbers in opposition to the broadcasters' petition. Independent musician and songwriter Joan Wasser[5] describes how the current conditions at commercial radio are prohibitive to a wide range of music being played, and that any erosion of payola requirements would only make matters worse:

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[4] Stilwell, Rachel. *MB Docket No. 15-52*. Comments Gray Communications, Inc. *Federal Communications Commission ECFS*. Web. 11 May 2015.
[5] Wasser, Joan. *MB Docket No. 15-52*. Comments of Joan Wasser. *Federal Communications Commission ECFS*. Web. 11 May 2015.

> "There is already so little variety on the radio; please do not limit it even more due to who has the money (and who doesn't). Great music is not about money. There was a time when every musician you've ever heard of didn't have any funding. How would they ever have gotten heard if they weren't able to count on stations who take risks for new music, new sounds. PLEASE help ALL music be heard; not just music with enormous monetary support."

Independent musician, songwriter and University of Georgia Terry College of Business Lecturer David Lowery describes how lax payola rules on broadcast radio may have established precedent and incentive for "steering" on webcast platforms, in which certain labels' catalog may be algorithmically "boosted" in exchange for lowered per-stream royalties. Although it is unlikely to be within the FCC's regulatory jurisdiction when such arrangements are made with regard to Internet transmissions, there are legitimate reasons for the FCC to contemplate this and other aspects of the current marketplace for music. At the very least, the participation of terrestrial broadcasters in such arrangements should make the Commission that much more skeptical of the radio conglomerates' request for a SID waiver. Lowery[6]:

> "While I concur with many of the comments that have been already filed objecting to the class payola waiver on public interest grounds, "steering agreements" are a problem with the waiver that I have not seen made by others. "Steering agreements" implicate the "other valuable consideration" and "indirect payment" prongs of the payola rules.
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> "I respectfully suggest that "steering agreements" are already creating a "payola lane" on both terrestrial and Internet radio to which the listener is none the wiser as it is. If the Commission grants the class waiver to the Radio Broadcasters Coalition, the Commission will make it even easier for a "payola lane" to form which I respectfully suggest is not in the public interest."

[6] Lowery, David. *MB Docket No. 15-52*. Comments of David Lowery. *Federal Communications Commission ECFS*. Web. 11 May 2015.

Jazz composer and bandleader Maria Schneider concisely describes[7] the harms that would follow the removal of the SID at a time when artists of diverse backgrounds and disciplines are already struggling:

> "Big Radio wants to basically legalize payola. The business is slowly eating away at every chance for musicians to earn a living, and equally as bad, it's eating away at our musically diverse culture. Please don't make it even easier for corporations to destroy the "MUSIC" part of the music business."

Although we are longstanding supporters of diversity in station ownership, Future of Music Coalition rejects the argument made by Multicultural Media Telecom and Internet Council (MMTC) that approval of the waiver "will be of particular benefit to minority broadcasters." MMTC writes that sponsorship identification requirements currently amount to[8]:

> "...a regressive sunk cost whose burden in dollars is essentially fixed for all broadcasters. Sponsorship ID announcements are aired during time that could otherwise be sold to advertisers, and may further erode audiences and advertising revenues by causing those who find the announcements to be an unwelcome disruption to change the channel" and thus impacts smaller broadcasters more because they typically capture less revenue."

This argument is specious and self-contradictory. If airing the required sponsorship identification results in lost time for ad sales, this is not a "cost whose burden in dollars is essentially fixed for all broadcasters" because advertising rates vary by listenership; the cost of this lost time varies as well. Furthermore, stations don't have to bear the cost of sponsorship ID unless they choose to air sponsored programming. Stations already make determinations about the frequency and length of advertising breaks, balancing revenue generation with the potential for more ads to annoy listeners; they similarly weigh these factors when making decisions about when to accept

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[7] Schneider, Maria. *MB Docket No. 15-52*. Comments of Maria Schneider. *Federal Communications Commission ECFS*. Web. 11 May 2015.

[8] Lake, William, Esq.. *MB Docket No. 15-52*. Comments of Multicultural Media Telecom and Internet Council. *Federal Communications Commission ECFS*. Web. 11 May 2015.

sponsored programming. The issues of scale associated with the marketplace advertising and sponsorship revenue, along with the associated impacts on smaller broadcasters, would be far better addressed through examination of ownership consolidation, rather than through blunt deregulation that deprives the public of important information. MMTC notably has nothing at all to say about the public interest impacts of airing more sponsored programming.

In our own initial comments in this docket, we describe the importance of on-air disclosure at the time of airing sponsored content, and enumerate many reasons that the elimination of this requirement is against the public interest and the FCC's stated goals of localism, competition and diversity. We reject outright the arguments made by the Radio Broadcasters Coalition, as well as filings by such conglomerates as Cumulus Media. Rather than rebut each instance of flawed logic and specious justification, we will instead refer the Commission to our original filing.

Future of Music Coalition applauds the Commission for taking this matter seriously. As the overwhelming majority of comments point out, the broadcasters' waiver request is counter to the public interest and a threat to a healthy and dynamic music ecosystem where talent and audience demand are given due consideration in our broadcast landscape. We look forward to the FCC maintaining the existing SID requirements.

Respectfully Submitted,

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