

April 8, 2015

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: MB Docket No. 09-143 – In the Matter of Petition Regarding the Actions of
Certain Radio Broadcasters in Opposition to the Performance Rights Act
NOTICE OF EX PARTE PRESENTATION**

Dear Ms. Dortch:

On April 8, 2015, Theodore Kalo, Executive Director of the MusicFIRST Coalition, J. Daniel Walsh, Senior Vice President, Valente & Associates, and undersigned counsel met with Commissioner Jessica Rosenworcel and with Valery Galasso, Policy Advisor to Commissioner Rosenworcel. During the meeting, we discussed the MusicFIRST Coalition's 2009 request for declaratory ruling in the above-captioned proceeding. Specifically, we discussed that broadcast licensees had sold advertising time and broadcast "public service announcements" in opposition to the Performance Rights Act and that act's provisions which would have allowed for compensation to music performers when their music is played on broadcast radio stations, and on the refusal of those stations to sell advertising time to proponents of the Performance Rights Act.

Although it has been nearly six years since that request was filed, we described the reasons why it would now be timely and appropriate for the Commission to address the issues raised in that 2009 request. Those reasons include broadcasters' similar conduct during the pendency of the Satellite Television Extension and Localism Act in 2014, and the anticipated reintroduction in Congress of a new Performance Rights Bill. A summary of the Coalition's key points was provided to Commissioner Rosenworcel and Ms. Galasso. Attached to this letter is a copy of that summary.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for the MusicFIRST Coalition.

Sincerely,



Mitchell F. Brecher

Attachment

Cc: Hon. Jessica Rosenworcel
Ms. Valery Galasso

Attachment



MB Docket No. 09-143

Who is the musicFIRST Coalition?: We are a Coalition of groups that represent artists, performers and musicians (The American Federation of Musicians, SAGAFTRA, and the Recording Academy); major record labels (RIAA), independent record labels (A2IM); and Soundexchange (the entity that distributes digital performance royalties).

AM/FM or “Terrestrial” Performance Right: Under current law, AM/FM radio pays nothing to artists and copyright owners/labels when it broadcasts their music (unlike satellite and Internet radio which do pay). The Performance Rights Act (PRA) would have corrected this inequity. Unlike performing artists, composers and publishers are paid for airplay on all radio platforms.

Our Issue – Refusing To Air Ads: In 2009 and 2010, radio broadcasters aired ads styled as Public Service Announcements opposing the PRA. As documented in our filing, broadcast stations refused to air musicFIRST ads refuting these claims.

Editorializing v. Serving Their Pecuniary Interest: We do not take issue with the right of radio broadcasters to editorialize. Nor do we think they are legally required to provide airtime for opposing viewpoints. However, Broadcasters are required to serve the public interest rather than promoting their own financial interests. When they air ads that distort the public debate on issues in which they have a financial interest, and refuse to sell advertising to persons with opposing views and financial interests, they violate their public interest responsibilities.

Hurts Music Creators: Music performers make important contributions to our culture and society. This distortion of the debate about how and whether they receive fair compensation for these contributions causes them harm.

The 2009 Petition: In 2009, the Coalition requested a declaratory ruling asking the Commission to investigate broadcaster’s misuse of their licenses to advance their own economic interests and to take other appropriate action. The request was assigned Docket No. 09-143. The request was widely supported by the music industry and predictably opposed by the broadcast industry led by the National Association of Broadcasters. No action was taken.

Recent events have necessitated that the Coalition renew its request for Commission action. Broadcasters engaged in similar conduct when Sen. Rockefeller and Sen. Thune included “local choice” language in their draft of a bill to reauthorize the Satellite Television Extension and Localism Act. In anticipation of the introduction of that legislation, which the broadcasters opposed, the NAB did a major national buy of ads emphasizing the

importance of local broadcast signals. When the American Television Alliance sought to buy ads on CBS Radio supporting local choice, CBS rejected them. Sen. Fischer (R-NE) then wrote to the GAO asking it to investigate whether the NAB paid commercial prices for the pro-broadcaster ads.

Requested Action: The Commission should ask broadcasters about their practices and take such further action as necessary and appropriate.

FM Chip is a related issue: The Coalition is aware that broadcasters have been advocating that the Commission require wireless devices, including cell phones, be equipped with FM Chips. In the absence of an AM/FM performance right, an FM Chip would allow radio broadcasters to boot strap over-the-air broadcasts onto smartphones without paying performers. This puts artist income at risk in a way that Congress never intended by eroding streams on Internet radio apps (e.g. Pandora) that do pay royalties and would significantly exacerbate the currently inequitable situation.