Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C., 20554

In the Matter of	)	
	)	
Radio Broadcasters Coalition	)	MB Docket No. 15-52
	)	
Petition For Class Waiver of the Commission's	)	
Sponsorship Identification Requirement	)	

COMMENTS OF GRAY COMMUNICATIONS, INC.

Gray Communications, Inc. is a Chicago-based radio programming consultancy, which provides programming and operational guidance to radio stations in popular formats such as Urban, Urban Adult Contemporary and Hip Hop. Gray Communications, Inc.'s proprietor, Tony Gray, has been programming and consulting radio stations, big and small, for over twenty-five years. Gray Communications, Inc. currently consults radio stations in a wide array of markets including New York City, Chicago, and Kansas City.

Gray Communications, Inc. respectfully submits this comment strongly opposing the changes to Sponsorship Identification requirements sought by the Radio Broadcasters Coalition, and respectfully requests that the Commission deny Radio Broadcaster's Coalition's ("RBC") Petition For Class Waiver of the Commissions' requirement that broadcasters air sponsorship identification announcements *at the time the sponsored material is broadcast*.

RBC alleges in the first page of its petition that it is requesting a "narrowly focused waiver of the sponsorship identification requirement" by allowing music and sports radio stations to shift almost all disclosures of paid programming from their airwaves to online. The waiver requested is not narrow in the least; rather, it is remarkably broad. The grant of RBC's waiver would not merely "change" the requirement that broadcasters air sponsorship identification announcements at the time sponsored material is broadcast. Nor would the grant of the waiver, as RBC asserts, "preserve the existing SID requirement and the related prohibition of "payola."[1] Rather, granting the waiver would entirely eliminate the requirement that broadcasters air their sponsorship identification announcements *at the time the sponsored material is broadcast*.

Granting the requested waiver would eviscerate the most important protections against undisclosed payola that now exist. Broadcast sponsorship identification requirements are among the oldest statutory provisions dealing with broadcast advertising, for good reason.[2] 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)

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[1] See "Petition For Class Waiver of the Radio Broadcasters Coalition," Nov. 26, 2014 at p. 2.

[2] See Kielbowicz, Richard and Lawson, Linda (2004) "Unmasking Hidden Commercials in Broadcasting: Origins of the Sponsorship Identification Regulations, 1927-1963," Federal Communications Law Journal: Vol. 56: Iss. 2, Article 4. At 333, available at: http://www.repository.law.indiana.edu/fclj/vol56/iss2/4.

[3] 47 CFR 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.

The RBC seeks to shift *all* disclosures of paid airplay applicable to particular individual recorded songs from its' radio stations' airwaves to those radio stations' websites.[4] If RBC's waiver is granted then, ultimately, radio broadcasters operating pursuant to the waiver "would inform consumers about sponsored music and sports programming" with *on-air announcements that occur only once daily instead of at the time of broadcast*, and would not be required to disclose which sound recordings were played in exchange for consideration in the form of sponsorship.[5]

47 C.F.R. § 73.1212(a)(2)(ii), if taken out of context (as RBC has done in its Petition), could be interpreted as saying that broadcasters are not required to identify the specific sponsored content whose airplay has been purchased. However, the requirement under 47 C.F.R. § 73.1212(a), namely that such disclosures be made *at the time of broadcast*, is precisely the section of the Sponsorship Identification requirements that is intended to ensure that listeners will be informed of which specific content is the subject of the applicable payola transaction that the broadcaster is obliged to disclose to its listeners (and not just to the visitors of its websites). If the Commission grants RBC's Petition, which hinges entirely on the words "once daily on air announcements,"[6] the Commission will allow RBC to set a precedent for broadcast entities to dupe their listeners into thinking that purchased airplay was programmed solely for the benefit of listeners.

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[4] See RBC's "Petition For Class Waiver of the Radio Broadcasters Coalition," Nov. 26, 2014, at pp. 2-4.
[5] See id. at p. 5 (emphasis added).
[6] See id. at p. 6.

While RBC alleges that shifting its sponsorship disclosures away from its airwaves and instead to its websites will enhance listeners' ability to obtain sponsorship identification information, it seeks to make such disclosures online only-- *instead of* disclosing such payola on air at the time of broadcast.

To provide an example comparison of RBC's proposed methods of disclosure: according to a 2013 article by The Wall Street Journal, iHeartMedia's WLTW-FM, an adult contemporary radio station in New York City, enjoyed about 4.7 million listeners per day,[7] but in December 2014 its website, http://www.1067litefm.com/main.html, had at most 160,000 visits per month during its peak season during holiday programming.[8] Even if we assumed to be true RBC's assertion that shifting sponsorship identifications from on-air at the time of broadcast to online "will allow these broadcasters to supply SID information in a more accessible manner,"[9] it does not follow that listeners generally have any interest in accepting the burden of having to go on the web or through a radio station's mobile app to search for disclosures of payola.

Even if all radio stations playing paid musical content were to offer listeners an app by which consumers could search for that stations' payola disclosures online, based on Mr. Gray's lengthy experience consulting radio stations on how to engage listeners, he expects that not even a minute fraction of listeners would actually seek that information online. When listening to the radio, listeners just want to hear the hits, along with great new music; those same listeners trust radio broadcasters to both program music on its own merits and to accept the affirmative burdens associated with disclosing sponsorship of specific content. If the Commission grants RBC's waiver petition, it will allow RBC

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[7] See Josh Dawsey, "City Has New Country Twang," The Wall Street Journal, March 26, 2013.
[8] See Similarweb analysis http://www.similarweb.com/website/1067litefm.com.
[9] See RBC's "Petition For Class Waiver of the Radio Broadcasters Coalition," at p. 1.

(and its members, consisting of five vertically integrated national media conglomerates, three regional radio conglomerates, and one local radio station group owner) to breach those listeners' trust.

As an observer of the interplay between radio entities and record labels over several decades, few radio stations or record labels want to admit to consumers that certain records are being played on the radio merely because that airplay was purchased, rather than because a radio programmer thought his or her listeners might actually enjoy hearing that particular track. It is the understanding of Gray Communications, Inc. that sponsorship identification requirements exist in order to protect the public from being duped about the source of the decisions about 1) which recordings are played on the radio, and 2) why those recordings are played on the radio.

It is Mr. Gray's observation that during times when barriers to undisclosed payola have been removed, many owners and programmers of consolidated radio entities and station "clusters" did not passively await offers of payment for airplay. Rather, they often withheld access to airplay to those unwilling to pay for the privilege of airplay.[10]

Music radio stations sound better and have more diverse programming when they program each recorded song on its merits only, instead of programming music merely because those tracks' airplay were purchased. Such merits can include popularity, artistic

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[10] See Chuck Philips, "Radio Exec's Claims of Payola Draw Fire," Los Angeles Times, Mar. 7, 2002, at C1, available at http://articles.latimes.com/2002/mar/07/business/fi-payola7; Chuck Phillips, "Clear Channel Seeks Direct Connection to Record Labels," Los Angeles Times, March 9, 2001, available at: http://articles.latimes.com/2001/mar/09/business/fi-35398; See Chuck Philips, "Logs Link Payments With Radio Airplay," Los Angeles Times,, May 29, 2001, at A., available at: http://articles.latimes.com/2001/may/29/news/mn-3777/2.

merit, important lyrical content, or simply that a particular recorded song is fun to listen to. Undisclosed payola is not a merit; it is instead a form of corruption.[11]

The public is well served by current sponsorship identification requirements. Those requirements help ensure that radio station owners program music that listeners want to hear (and *should* have an opportunity to hear, in the name of programming diversity), instead of being duped into hearing what radio stations are paid to play.

For the reasons set forth above, Gray Communications, Inc. respectfully requests that the Commission deny RBC's Petition For Class Waiver of the Commission's Sponsorship Identification Requirement.

Respectfully Submitted,

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[11] See Ethan Smith, "Universal Music Settles Claims Over Radio Play " Wall Street Journal, May 12, 2006, at A17, available at: http://www.wsj.com/articles/SB114737907462850504; Jeff Leeds, "Radio Industry's Discomfort Grows Over Payola-Like Practice," Los Angeles Times, Oct. 21, 2002, at C1, available at: http://articles.latimes.com/2002/oct/21/business/fi-payola21; Chuck Philips, "Logs Link Payments With Radio Airplay," supra note 10.