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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

September 8, 2009

Re: MusicFIRST Request for Declaratory Relief Regarding Actions Contrary to the Public Interest by Certain Radio Broadcasters in Opposition to the Performance Rights Act, MB Dkt 09-143

Dear Ms. Dortch:

Free Press urges the Commission to investigate the grounds of the *Complaint and Request for Declaratory Ruling* filed by MusicFIRST (MB DKT 09-143) regarding practices by certain broadcasters in opposition to the Performance Rights Act (PRA). Free Press is a national, nonpartisan, nonprofit organization working to reform the media. Free Press does not represent the interests of the recording industry or the broadcast industry, but submits this letter regarding the impact of the alleged actions on the public.

MusicFIRST's complaint charges broadcasters with some highly dubious practices, including threatening and boycotting musicians who support the PRA, as well as airing false and deceptive announcements. *MusicFIRST Petition* at 1. Broadcasters are the beneficiaries of free, exclusive use of the publicly owned spectrum. As licensees of the public airwaves, broadcasters have the obligation to operate their licenses consistent with the public interest, convenience, and necessity. The allegations detailed in MusicFIRST's petition, if borne out by the FCC's investigation, suggest that some broadcasters have been acting inconsistent with that duty.

As a threshold matter, broadcasters' position on the validity of the Performance Rights Act and whether they may air those views is not in question. Broadcasters have the right take a stance on political issues and to express their opinions. What is at issue is the extent – consistent with the public interest – to which broadcasters may exert their considerable control of the airwaves to take coordinated anticompetitive action to punish their political opponents and to limit the public's access to information on an issue of national importance.

Broadcasters maintain a powerful position as gatekeepers of information disseminated over the public airwaves. By acting in concert to prevent certain messages or content from reaching listeners, broadcasters could severely limit the public's access to information. Consequently, the black-listing of artists and musicians who take a political stance contrary to the financial interests of broadcasters would have a negative impact on the public's ability to access those artists, and on those artists' ability to be heard. We encourage the FCC to investigate MusicFIRST's claims and the potential anticompetitive impact of broadcaster actions on the listening public.

Because of broadcasters' power to control the content over the airwaves, it is imperative that listeners be told when the broadcast of particular messages has been influenced by economic or political inducements. Accordingly, Free Press urges the Commission to examine whether broadcasters airing anti-PRA spots have complied with the FCC's sponsorship identification rules. These rules, which require broadcasters to disclose when and from whom a licensee has received consideration in exchange for the airing of content, are premised on the principle that members of the public deserve to know who is paying (and being paid) to persuade them. *See* 47 C.F.R. § 73.1212.

According to MusicFIRST, the National Association of Broadcasters is supplying broadcasters with many of the anti-PRA advertisements described in the complaint. *MusicFIRST Petition* at 9. If that is the case, those arrangements should be disclosed via an on-air notice. Indeed, the FCC specifically requires disclosure “[i]n the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting...” 47 C.F.R. § 73.1212(d). Thus, although licensees have the right to broadcast their opinions on issues of political importance, listeners deserve to know when economic or political considerations have played a part in that broadcast, so that the public may better evaluate the validity and objectivity of a particular message.

Broadcasters are licensed to operate in the public interest – not pure self-interest. Free Press urges the Commission to investigate thoroughly the allegations contained in MusicFIRST's complaint and take appropriate action if it finds that there has been a violation of FCC rules or policies.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ben Scott', with a long horizontal line extending to the right.

Ben Scott
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