

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
musicFIRST Petition Regarding) MB Docket No. 09-143
The Actions of Certain Radio Broadcasters)
In Opposition to the Performance Right)

COMMENTS OF
AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND
CANADA (AFL-CIO) AND
NATIONAL CONSUMERS LEAGUE

The American Federation of Musicians of the United States and Canada (“AFM”), an affiliate of the AFL-CIO, is the largest organization in the world representing the interests of professional musicians. AFM spearheads the negotiation of fair labor agreements on behalf of its members, and advocates for protecting ownership of recorded music, and securing benefits such as health care and pension benefits. The National Consumers League (“NCL”), America’s oldest consumer organization, is a private, nonprofit advocacy group representing consumers on marketplace and workplace issues. Its mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad.

The Petition filed in this proceeding alleges that that certain radio broadcasters have retaliated or threatened to retaliate against musician workers because those workers exercised their freedom of speech and expression to stand up for their workers and civil rights, and that certain broadcasters have refused to provide paid access to the public airwaves under their control to the petitioner to run advertisements in order to advocate

for their workers and civil rights, because providing such access could negatively affect the broadcaster's own financial interest. If true, retaliation for, threats of retaliation for and boycotting the ability of workers to publicly and effectively advocate for their rights on the public airwaves for the sole purpose of protecting the personal financial interests of the broadcaster places that financial interest above the public interest. The Commission should launch an investigation into these allegations, should consider any such activity when reviewing whether a radio broadcaster has met its public obligations during the process for license renewal, should consider urging Congress to shorten the license term for radio broadcasters so a more thorough review of these types of activities can be performed on a more regular basis to prevent abuse of the public's resources by those who are granted control over them, and should consider recognizing a limited right of access through ad buys under circumstances similar to those presented here to ensure this type of abuse does not continue.

Broadcasters certainly have a right to exercise their freedom of speech and express their views under the Constitution. But they may not use the public airwaves entrusted to them by the government and under their control to suppress the free speech and expression of workers by threatening to punish those workers if they stand up for their right to be compensated for their work – especially when that compensation would come from the broadcaster itself. This would be tantamount to an employer threatening an employee for unionizing, demanding higher wages or otherwise trying to protect his or

her civil rights – and using public resources under their control to do it. The government cannot allow such activity.

In addition, while broadcasters certainly have the right to determine their programming, denying paid access to the public airwaves – in this case in the context of a worker’s right to be fairly compensated by the broadcaster for his or her work – places the financial interest of the broadcaster above the public’s interest to receive “suitable access to social, political, esthetic, moral and other ideas and experiences . . . “ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

The Communications Act requires that the public interest, convenience, and necessity be served when the Commission grants an application by or license renewal for a radio broadcaster. The public interest is not served when a licensee retaliates or threatens to retaliate against a worker they do not want to compensate because that worker exercised his or her freedom of speech and expression to stand up for his or her civil rights. Nor is it served when a licensee refuses to provide access to the public airwaves it controls to those who desire to run paid advertisements to advocate for their workers and civil rights, because providing such access could negatively affect the licensee’s own financial interest. The Commission has flexibility in deciding how to implement and determine whether a broadcaster’s obligations to serve the public interest, including scrutinizing the licensee’s activities during license renewal proceedings.

Therefore, we urge the Commission to (i) launch an investigation into the activities alleged in the petition; (ii) take the actions noted by Petitioners into account in

determining whether the broadcasters have met their public interest obligations during the license renewal process, (iii) consider urging Congress to shorten the license term for radio broadcaster licensees in order to give the FCC greater oversight over broadcasters to ensure they meet their statutory obligations, and (iv) consider recognizing a limited right of access through ad buys under the circumstances similar to those presented here to ensure this type of abuse does not continue.

Respectfully submitted,

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