

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Petition Regarding the Actions of Certain ) MB Docket No. 09-143  
Radio Broadcasters in Opposition to the )  
Performance Rights Act )

**JOINT REPLY COMMENTS OF  
BEASLEY BROADCAST GROUP, INC., GREATER MEDIA, INC.,  
JOURNAL BROADCAST GROUP, INC. AND  
LINCOLN FINANCIAL MEDIA COMPANY**

Beasley Broadcast Group, Inc., Greater Media, Inc., Journal Broadcast Group, Inc. and Lincoln Financial Media Company (together, the “Joint Commenters”)<sup>1</sup> hereby jointly reply to the comments submitted in response to the Commission’s Public Notice concerning the Request for Declaratory Ruling (“Petition”) of the MusicFIRST Coalition (“MusicFIRST”).<sup>2</sup> As explained below, the Joint Commenters fully support those parties urging the Commission to summarily dismiss the Petition, which is factually misdirected and legally baseless.

**I. Comments Filed In This Proceeding Offer Compelling Arguments Against, And Only Vague Support For, MusicFIRST’s Petition.**

In its Petition, MusicFIRST accuses “certain,” mostly unnamed, radio broadcasters of placing their own self interest ahead of the public interest by allegedly engaging in a purportedly

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<sup>1</sup> Beasley Broadcast Group, Inc., Greater Media, Inc. (“Greater Media”), Journal Broadcast Group, Inc. (“Journal”) and Lincoln Financial Media Company (“Lincoln”) are leading communications companies that collectively operate more than 100 radio broadcast stations located throughout the United States.

<sup>2</sup> Public Notice, Media Bureau Action, DA 09-1773 (Aug. 7, 2009) (“Public Notice”).

nefarious “coordinated campaign” to oppose the Performance Rights Act (“PRA”) legislation pending before Congress.<sup>3</sup> The Petition requests the Commission to investigate these claims and to declare the broadcasters’ alleged conduct unlawful.<sup>4</sup> Notwithstanding the serious nature of the allegations it makes, MusicFIRST offers scant evidence in support of them. What little it does provide relies on vague generalities, largely anonymous sources and even, as explained in Section II below, a distortion of the very few facts that are offered.

The Commission properly recognized in the Public Notice the “substantial First Amendment interests . . . involved in the examination of speech of any kind,” and that it would be necessary “to develop a more complete factual record” before the actions alleged by MusicFIRST could be addressed.<sup>5</sup> Yet despite the Commission’s explicit call for specific factual information, no party responding to the Public Notice – including Petitioner MusicFIRST, which remarkably declined to submit any comments – has offered anything of substance to support the Petition’s vague allegations and flawed legal premises.<sup>6</sup> Instead, these parties merely echo, with little or no factual support of their own, MusicFIRST’s alarmist claims of an industry-wide campaign to

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<sup>3</sup> Petition at 1, 3.

<sup>4</sup> *Id.* at 16.

<sup>5</sup> Public Notice at 2.

<sup>6</sup> Several of the comments contain similarly worded arguments which suggest that they are based on a form letter or talking points prepared in support of MusicFIRST’s Petition. *See, e.g.*, Comments of The Vocal Group Hall of Fame Foundation, MB Docket No. 09-143 (“Vocal Group Comments”); Comments of the American Association of Independent Music, MB Docket No. 09-143; Comments of David Altschul et al., MB Docket No. 09-143. It is ironic that MusicFIRST, an organization that accuses broadcasters of engaging in a “coordinated campaign” against the PRA, is itself the beneficiary of what appears to be an orchestrated effort to generate support for its request for a Commission investigation of broadcaster conduct.

propagate false information or to deny PRA supporters access to the radio airwaves.<sup>7</sup> They also parrot, without legal support, MusicFIRST's inappropriate characterizations of what constitutes a broadcast licensee's public interest obligations.<sup>8</sup> In short, the record thus far developed is wholly inadequate to support the relief sought by MusicFIRST.

In contrast to the comments filed in support of the Petition, those filed in opposition thoroughly expose MusicFIRST's flawed legal and factual showing.<sup>9</sup> The comments of the National Association of Broadcasters ("NAB"), in particular, reveal the Petition's many defects. Among other persuasive points, the NAB shows that:

- Section 326 of the Communications Act prohibits the Commission from engaging in censorship or from regulating broadcast licensees in a manner that interferes with the right of free speech. This statutory provision, and the case law interpreting it, unequivocally precludes the level of Commission oversight of station programming that MusicFIRST requests.<sup>10</sup>
- Section 3 of the Communications Act expressly excludes broadcasters from the definition of "common carrier." Accordingly, radio stations are under no obligation to broadcast material, including advertisements, presented to them by the public. Indeed, mandating broadcasters to air programming of the type at issue here would be the functional equivalent

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<sup>7</sup> See, e.g., Comments of The Institute for Policy Innovation, MB Docket No. 09-143 at 1; Comments of The Recording Academy, MB Docket No. 09-143 at 2.

<sup>8</sup> See, e.g., Comments of Music Managers Forum – US, MB Docket No. 09-143 at 2; Vocal Group Comments at 2.

<sup>9</sup> See, e.g., Comments of the National Association of Broadcasters, MB Docket No. 09-143 ("NAB Comments"); Comments of Radio Training Network, Inc., MB Docket No. 09-143 ("Radio Training Comments"); Comments of American Women in Radio and Television, MB Docket No. 09-143 ("Women in Radio Comments").

<sup>10</sup> See NAB Comments at 13-14. See also Women in Radio Comments at 3.

of a return of the unconstitutional Fairness Doctrine – MusicFIRST’s denial of pursuit of that result notwithstanding.<sup>11</sup>

- It is not axiomatic that passage of the PRA is in the public interest, as MusicFIRST would have the Commission believe. The PRA poses a serious threat to radio’s financial future, and defeat of the legislation will help ensure the continued viability of free over-the-air radio, an industry (unlike the hyper-consolidated and largely alien-owned record label industry) that serves local communities in countless and significant ways, as has been amply documented in this and other Commission proceedings.<sup>12</sup>
- MusicFIRST failed to even approach making a *prima facie* case regarding licensee misconduct. Vague, unsupported references to alleged “threats,” “intimidation,” and “boycotts” fall far short of the well-established evidentiary standards required before commencement of a Commission investigation is appropriate.<sup>13</sup>

As the NAB’s comments convincingly demonstrate, the Petition’s rhetoric cannot remedy the multiple defects in MusicFIRST’s legal reasoning, and MusicFIRST presents no factual basis to support initiation of a Commission investigation. The Joint Commenters therefore strongly support the comments filed by the NAB, and join with the NAB and others to urge the Commission to summarily dismiss the Petition.

## **II. The Record In This Proceeding, As Distorted By MusicFIRST, Requires Correction.**

While the record in this proceeding overwhelming supports dismissal of the Petition, certain aspects of that record, as improperly postulated by MusicFIRST, require correction. In particular, the Joint Commenters question the credibility of the assertion made in the Petition that

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<sup>11</sup> See NAB Comments at 11-13. See also Comments of Trinity Christian Center of Santa Ana, Inc., Regarding the Petition of MusicFIRST, MB Docket No. 09-143 at 14; Comments of Robert J. Buenzle, MB Docket No. 09-143 at 2; Radio Training Comments at 2-3.

<sup>12</sup> See NAB Comments at 4-8.

<sup>13</sup> See NAB Comments at 38-39. See also Women in Radio Comments at 5-6.

radio broadcasters in overwhelming numbers have turned down MusicFIRST advertisements.<sup>14</sup> For example, surveys conducted by Greater Media, Journal and Lincoln determined that, with one exception, none of their radio stations has been approached by MusicFIRST (or a third party representing MusicFIRST) to request placement of any spot in support of the PRA.<sup>15</sup> The sole exception is Greater Media's stations in Detroit, which received a single inquiry by a third party representing MusicFIRST that failed to follow up on its initial inquiry.<sup>16</sup> Importantly, however, the Detroit Greater Media stations did not, contrary to news reports cited by MusicFIRST, definitively reject the spot.<sup>17</sup> The experiences of the Joint Commenters suggest that MusicFIRST likely contacted very few radio stations regarding its advertisements apparently to allow it to exaggerate the extent to which broadcasters have declined to air the spots.<sup>18</sup>

MusicFIRST also asserts that broadcasters are stifling open and truthful discussion of the PRA issue.<sup>19</sup> This statement is likewise disingenuous. The NAB's comments identify numerous instances in which stations discussed both sides of the PRA legislation.<sup>20</sup> To add yet another example of broadcast licensee promotion of robust debate, Greater Media's Detroit station, WCSX(FM), has attempted to arrange an on-air interview with a member of Congress who has

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<sup>14</sup> Petition at 6-7.

<sup>15</sup> See Declarations of Ellen Rubin, Doug Kiel and John Dimick, attached hereto.

<sup>16</sup> See Declaration of John Gallagher ("Gallagher Declaration"), attached hereto.

<sup>17</sup> *Id.*

<sup>18</sup> In fact, as the NAB noted in its comments, MusicFIRST refused the offer of a leading Washington, D.C. radio station to air its PRA advertisement. See NAB Comments at 20.

<sup>19</sup> Petition at 5-6.

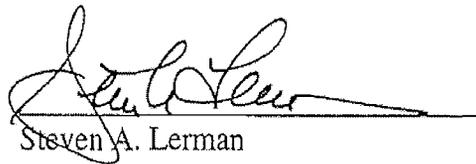
<sup>20</sup> See NAB Comments at 19 & n.53 (listing examples of broadcasters that have aired informational programming concerning the PRA, although under no obligation to address the PRA at all).

publicly backed the PRA.<sup>21</sup> While it has not yet heard back from the Congressman, despite repeated messages left with his office, WCSX(FM) will continue to pursue the interview in the interest of offering its listeners a comprehensive discussion of the PRA issue.<sup>22</sup>

### Conclusion

For the foregoing reasons, the Joint Commenters request that the Commission dismiss MusicFIRST's Petition and close this proceeding without further action.

Respectfully submitted,



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Group, Inc.; and Lincoln Financial Media  
Company*

September 23, 2009

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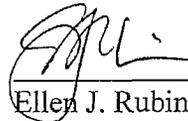
<sup>21</sup> See Gallagher Declaration.

<sup>22</sup> *Id.*

## DECLARATION OF ELLEN RUBIN

I, Ellen J. Rubin, hereby declare:

1. I am Vice President and General Counsel of Greater Media, Inc. (“Greater Media”).
2. I have reviewed the foregoing Joint Reply Comments dated September 23, 2009, concerning the Request for Declaratory Ruling filed with the Federal Communications Commission by the MusicFIRST Coalition, and the facts contained therein regarding the survey of the Greater Media radio stations are true and correct to the best of my knowledge, information and belief.



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Ellen J. Rubin  
Greater Media, Inc.

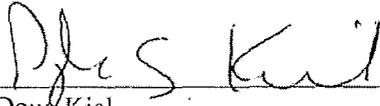
September 23, 2009

## DECLARATION OF DOUG KIEL

I, Doug Kiel, hereby declare:

1. I am Vice Chairman and Chief Executive Officer of Journal Broadcast Group, Inc. ("Journal").

2. I have reviewed the foregoing Joint Reply Comments dated September 23, 2009, concerning the Request for Declaratory Ruling filed with the Federal Communications Commission by the MusicFIRST Coalition, and the facts contained therein concerning Journal are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Doug Kiel  
Journal Broadcast Group Inc.

September 23, 2009

**DECLARATION OF JOHN DIMICK**

I, John Dimick, hereby declare:

1. I am Vice President of Programming and Operations of Lincoln Financial Media Company ("Lincoln").
2. I have reviewed the foregoing Joint Reply Comments dated September 23, 2009, concerning the Request for Declaratory Ruling filed with the Federal Communications Commission by the MusicFIRST Coalition, and the facts contained therein concerning Lincoln are true and correct to the best of my knowledge, information and belief.



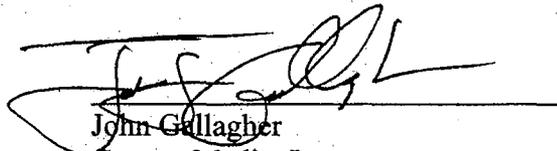
John Dimick  
Lincoln Financial Media Company

September 23, 2009

## DECLARATION OF JOHN GALLAGHER

I, John Gallagher, hereby declare:

1. I am Market Manager of the Greater Media, Inc. ("Greater Media") radio stations serving the Detroit market.
2. I have reviewed the foregoing Joint Reply Comments dated September 23, 2009, concerning the Request for Declaratory Ruling filed with the Federal Communications Commission by the MusicFIRST Coalition ("MusicFIRST"). The facts contained therein regarding the inquiry to place a MusicFIRST spot on Greater Media's Detroit stations, Greater Media's response to that inquiry, and WCSX(FM)'s continuing attempts to arrange an interview with a member of Congress about his support of the Performance Rights Act, are true and correct to the best of my knowledge, information and belief.

  
John Gallagher  
Greater Media, Inc.

September 23, 2009