



September 08, 2014

Chairman Tom Wheeler
Federal Communications Commission
Office of the Chairman
Via Hand Delivery
445 12th Street, SW
Washington, DC 20554-0005

Re: Ex Parte Notice, MB Docket No. 09-143, *In the Matter of Petition Regarding the Actions of Certain Radio Broadcasters in Opposition to the Performance Rights Act*

Dear Chairman Wheeler:

On June 9, 2009, the musicFIRST Coalition (“musicFIRST”) filed a petition, MB Docket No. 09-143, requesting that the Commission investigate the potential abuse of the public airwaves by certain radio broadcasters seeking to influence the debate then-pending in Congress over proposed legislation called the Performance Rights Act (“PRA”). The PRA would have provided for the payment of royalties to artists and musicians when their work is played on terrestrial radio (Internet and Satellite radio already pay such royalties).

The gist of our petition was that broadcasters were improperly refusing to air musicFIRST radio ads supporting the PRA, even though they were themselves airing ads opposing it (which they falsely labeled “public service announcements”). Adding insult (and potential illegality) to injury, our investigation revealed numerous instances where broadcasters were not in compliance with public file requirements with respect to these so-called “public service announcements.” The musicFIRST Coalition believed then and maintains today that this conduct represents an abuse of the public airwaves and a violation of public interest obligations for the purpose of lining the broadcasters’ pockets at the expense of artists and copyright owners. Viewpoint discrimination of this type – airing self-interested ads on one side of any issue, but refusing to air paid ads on the other side – has long been recognized as an especially pernicious form of discrimination in the marketplace of ideas and puts our political process at risk.

We asked the Commission to issue a declaratory ruling that the actions of certain radio broadcasters in opposition to the PRA ran contrary to the public interest and to ensure that broadcasters ceased such actions. A Public Notice was filed on August 7, 2009;

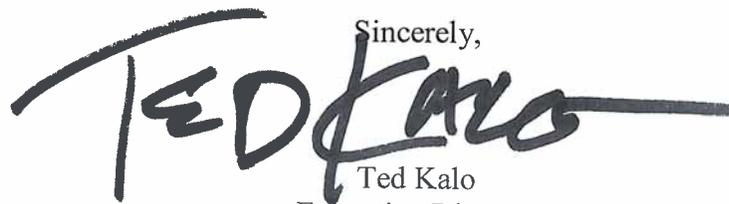


representatives from musicFIRST met with both the Media Bureau and Enforcement Bureau to discuss the proceeding, and extensive comments on the petition were filed. As of September 8, 2014, the proceeding is still “open” in the Commission’s electronic docket records.

We have recently learned, however, that the broadcasters’ pattern of abuse continues. This past month, the American Television Alliance (“ATVA”) produced ads supporting a bipartisan “local choice” legislative proposal by Senators Rockefeller and Thune (a proposed addition to the pending Satellite Television Extension and Localism Act). It has been widely reported, however, that multiple CBS radio stations have refused to air these ads. At the same time, we are advised that ads opposing the “local choice” proposal, produced by the NAB, have been aired on those same stations.

Broadcasters’ licenses to use the public’s airwaves are not blank checks for the NAB to advance its narrow political and pecuniary agenda: they exist to serve the public. Presenting only one side of a public policy issue in this way mis-serves the public and skews the policy debate. And if this pattern of abuse is allowed to continue unchecked, it will only grow more widespread and sophisticated, and the NAB and its members will only dominate our policy discourse even more.

I know that you share our commitment to ensuring that broadcasters are acting in the public interest and that any potential First Amendment, Communications Act, or other policy violations are addressed. Accordingly, on behalf of the musicFIRST Coalition, I urge you to carefully review our open complaint, now incorporating this further example of broadcaster abuse, and to take prompt corrective action.

Sincerely,

Ted Kalo
Executive Director
musicFIRST Coalition

cc: Jane Mago, Executive Vice President and General Counsel, National Association of Broadcasters