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

In re Matter of
Radio Broadcasters Coalition  MB Docket No.15-52
Petition for Class Waiver of the
Commission’s Sponsorship Identification

To: Secretary
Attn: Media Bureau

COMMENTS OF CUMULUS MEDIA INC.

Cumulus Media Inc. (“Cumulus”), acting pursuant to the Commission’s Public Notice, DA 15-325 (March 13, 2015), hereby files comments in support of the Petition for Class Waiver (the “Petition”) filed by the Radio Broadcasters Coalition (the “Coalition”), which seeks a limited waiver of the sponsorship identification (“SID”) requirements of Section 317 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. §317, and Section 73.1212 of the Commission’s rules, 47 C.F.R. §73.1212, for those radio broadcasters who satisfy certain eligibility criteria.

I. Cumulus’ Interest

Cumulus is a publicly-traded company which owns and operates approximately 460 radio stations around the country. Cumulus has an interest in ensuring that its stations’ listeners have access to information concerning any consideration received from third parties for the broadcast of advertisements and other material on those stations.

II. Coalition Proposal

The Coalition’s proposal sets forth criteria that would enable every radio broadcaster (including but not limited to those who are part of the Coalition) to be eligible for a waiver of the SID requirements. Those criteria involve three (3) basic elements.
First, a radio broadcaster would have to establish a section or a link on its website with an appropriately-titled tab (i.e. “Enhanced Disclosure of Sponsored Programming”) that would provide listeners with access to the following information with respect to sponsored music and/or sports programming: (1) the name(s) of the sponsor(s) of music and/or sports programming broadcast or to be broadcast on the station(s); (2) the name(s) of the program(s) in which the sponsored music and/or sports programming appears; (3) “a list of the applicable artists and songs the station played, and/or sports teams the station featured, that are affiliated with the companies that supplied consideration;” (4) the type of consideration received by the broadcaster (such as money, on-air appearances by artists, access to songs before formal release, concert tickets and other prizes, CDs, merchandise, or tickets to a sporting event); and (5) the type of consideration the broadcaster agreed to provide in return (such as increased air play of artists’ songs, enhanced coverage of sporting events, and provision or promotion of contests involving the sponsor). Petition at 3-4 and Appendix A. The section or link containing the foregoing information would be updated periodically to account for changes in the sponsored music and/or sports programming being aired by the particular station.

Second, the radio broadcaster would initiate a three-week “listener-education campaign period” to advise listeners of the existence of the online section or link with the “Enhanced Disclosures of Sponsored Programming.” The campaign would consist of announcements broadcast four (4) times each day during dayparts in which radio listening is the highest. The announcements would state that some of the music and/or sports programming on the station is sponsored by third parties and that additional information concerning that sponsored music and/or sports programming can be obtained in the section or link on the station’s website or made available upon request by email, a visit to the station, or a telephone call. The station

1 The specific dayparts in which the announcement would be broadcast would depend on whether the announcement was aired on a weekday or a weekend. See Petition at 5 n.5.
would comply with all SID requirements in the Act and Commission rules during that three-week listener-educational campaign period.

Third, after the three-week listener-education campaign period, the station would not have to comply with the SID requirements for each sponsored music and/or sports programming. Instead, the station would air one announcement each day between 6 am and 7 pm which would (1) identify “all applicable sponsored music and/or sports programming broadcast on the station that day,” Petition, Appendix A at i; (2) state that “some music and/or sports programming (as applicable) aired on the station is ‘paid for’ or ‘sponsored by’ third parties,” id. at ii; (3) “disclose the identities of all third party sponsors associated with that day’s sponsored programming,” id.; and (4) state that additional information concerning the sponsored music and/or sports programming is available on the station’s website or upon request by email, by telephone, or in person through a visit to the station. See Petition, Appendix A.

III. Coalition Waiver Proposal Serves the Public Interest

The Coalition’s waiver proposal is consistent with other actions taken or contemplated by the Commission to conform its rules to the dynamics of the 21st century and would otherwise serve the public interest. It cannot be emphasized too strongly that the current language in Section 317 of the Act was signed into law in 1960 and that the corresponding Commission rules were largely fashioned shortly thereafter when the world was very different. There was no meaningful audio competition for radio, virtually all communications were effectuated through a wireline telephone or mail delivered by the United States Postal Service, and the only video available to the public at large was through a stand-alone television set operating with an analog signal.

All of that has changed dramatically. Radio faces considerable competition from many sources, including satellite radio, social media, and online radio services; mail delivery from the United States Postal Service has been largely eclipsed by overnight courier services and
the ubiquitous availability of email on computers and smartphones and texting through mobile telephones; and the availability of websites and other online services have resulted in a diminution of the time spent in front of a television set.

The driving force for many of these changes is the Internet. As the Commission itself has recognized, the Internet “drives the American economy and serves, every day, as a critical tool for America’s citizens to conduct commerce, communicate, educate, entertain, and engage in the world around them.” Protecting and Promoting the Open Internet, FCC 15-24 (March 12, 2015) at 3. That use of the Internet is not confined to fix broadband connections. There are more than 127 million mobile devices in the United States with an Internet connection and, as the Commission recognized, “mobile broadband is becoming an increasingly important pathway to the Internet independent of any fixed broadband connections consumers may have. . .” Id. at 5.

The Commission acknowledged the importance of the Internet in deciding to require television broadcasters to upload their public inspection files to the Commission’s online database and in more recently proposing that radio broadcasters (as well as other communications providers) similarly upload their public inspection files to the Commission’s database. As the Commission explained, “[T]his modernization of the public inspection file is ‘plain common sense’” because the “evolution of the Internet and the spread of broadband infrastructure have transformed the way society accesses information today.” Expansion of Online Public File Obligations, 29 FCC Rcd 15943, 15951 (2014).

The changing environment in which radio competes and in which the public accesses information has required radio broadcasters to become creative in developing strategies to attract listeners and to secure advertising dollars. Those strategies include the planning and promotion of events (such as concerts, sporting events, or in-station appearances by a recording artist) as well as participation in business ventures with third parties to enhance the programming broadcast on a radio station (such as arrangements with artists, record labels, and sports teams).
Involvement in those alternative strategies, in turn, has made compliance with the SID requirements that much more cumbersome to the broadcaster and that much more disruptive to the listener.

The Coalition’s waiver proposal would enable the Commission as well as radio broadcasters to ensure that the listening public has ready access to information about sponsored music and/or sports programming without unduly disrupting the consumer’s listening experience.

IV. Questions to be Addressed

Although the conceptual underpinnings of the Coalition’s waiver proposal are sound, certain matters need to be clarified either in any rule which the Commission might adopt or in any order adopting that rule. The goal should be to maximize the use of bright-line rules that are easily understood by the radio broadcaster and easily applied by the Commission in enforcing the rule. Those matters include the following:

(1) It would be useful for each radio broadcaster to set forth on its website the dates of the three-week period listener-education campaign period. Including that information on the website will hopefully avoid later questions from listeners, who might not hear the first daily announcements of sponsored music and/or sports programming or the establishment of the online tab or section until weeks, or perhaps months or even years, after that initial three-week period has expired. Websites can include a certification from the radio broadcaster which, in the absence of extrinsic evidence to the contrary, should be accepted at face value by the Commission.

(2) The proposed rule set forth in Appendix A references “sports teams” the station featured. Petition, Appendix A at (3)(b)(iii). That reference should probably be broadened to include sports programming (i.e. boxing) that does not include a team.

(3) The proposed rule set forth in Appendix A of the Coalition’s Petition states that the announcements to be broadcast after the initial three-week listener-education campaign period would reference the programming “aired” on the station, the “songs the station played and/or sports teams the station featured,” the “type of consideration received,” and “the type of consideration provided by the radio station in return . . . .” All of that language should be modified to reflect the possibility that some of the music and/or
sports programming covered by any sponsorship may not yet have been aired but may be aired later in that same day. Similarly, some or all of the consideration provided or received in exchange for the broadcast of material on the station may not be received or provided until a subsequent date. Accordingly, the language should reference “all sponsored music and/or sports programming aired or to be aired on the station,” the “applicable artists and songs the station played or will play, and/or sports teams [or sporting event] the stationed featured or will feature that are affiliated with the sponsoring individuals, entities or companies,” the “type of consideration received or to be received by the radio station” as well as the “type of consideration provided or to be provided by the radio station in return . . .”

(4) The Coalition’s Petition proposed that the radio broadcaster use its own discretion in providing a label for the tab or other section of its website where the enhanced disclosure information is included (suggesting the possible use of a title of “Enhanced Disclosure of Sponsored Programming”). In order to avoid confusion and later arguments on whether the broadcaster’s title was sufficiently clear, it would be best for the Commission to specify the title(s) that should be used for that tab or section of the radio broadcaster’s website.

(5) The Coalition’s Petition states that the waiver would not extend to “any sponsored content appearing within news, informational, or political programming . . . .” Petition at 2 n.3. Some sports programming includes news and other information. ESPN programming is an obvious example. The question therefore arises whether the reference to “sports programming” in the Petition’s proposed rule is confined to sporting events or whether it includes programs in which a host or other person provides information about sporting events and sports teams as well as sports business and personalities. The rule should be revised accordingly to more precisely reflect the scope of the waiver.

(6) A question arises with respect to the application of the new rule to a radio broadcaster’s business ventures with a third party. Those business ventures can take many forms (i.e. corporation, partnership, limited liability company, or joint venture) and can involve any number of activities that affect the station’s programming (i.e. promotion of individual artists, broadcast of songs by a chosen artist, or broadcast of a sporting event). The Commission had previously eliminated policies imposing restrictions on a broadcaster’s right to promote its non-broadcast business. See Elimination of Unnecessary Broadcast Regulation, 57 RR2d 913, 920-21 (1985), recon. denied, 58 RR 2d 864 (1985), aff’d, TRAC v. FCC, 800 F.2d 1181 (D.C. Cir. 1986). That decision would seem to eliminate any requirement to categorize
music or sports programming as “sponsored” if the music or sports programming is provided by the business venture which the radio broadcaster formed or entered into with a third party. A radio broadcaster may nonetheless elect to identify such music or sports programming in the “Enhanced Disclosure of Sponsored Programming” tab or link on its website as well as in the announcements broadcast pursuant to the new rule. The election to include such music and/or sports programming in those disclosures should not be treated as an admission by the radio broadcaster that such music and/or sports programming is necessarily subject to the SID requirements (in the event a dispute or other issue arises with respect to such music and/or sports programming).

(7) The rule or the order adopting any rule should make it clear that the rule has no applicability to those situations where a third party (i.e. a record label) provides some benefit (i.e. tickets to a concert, a live appearance an artists on a radio show) with no promise of consideration being provided by the radio broadcaster in return.

(8) The name of each “program” during which sponsored material will be broadcast should be left to the reasonable discretion of the radio broadcaster. Some programs have a particular name, but many others are identified only by the names of the on-air personalities. The radio broadcaster should not be second-guessed on the title of a program if its choice is reasonable.

Conclusion

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Commission adopt the class waiver proposed by the Coalition in its Petition with the clarifications requested herein.

Respectfully submitted,

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