In the Matter of

Radio Broadcasters Coalition

Petition for Class Waiver of the Commission’s Sponsorship Identification Requirement

Docket No. 15-52

REPLY COMMENTS OF THE RADIO BROADCASTERS COALITION

The Radio Broadcasters Coalition (“Coalition”) hereby submits these Reply Comments to encourage the Federal Communications Commission (“FCC” or “Commission”) to enhance and modernize its sponsorship identification (“SID”) rule, by granting a limited class of radio broadcasters a waiver of that rule as proposed by the Coalition in its Petition for Class Waiver filed on November 26, 2014 (the “Petition”). The Petition proposes to allow a narrowly defined class of broadcasters to supply certain SID information online while continuing to make on-air announcements, thus improving and enhancing the information available to consumers. Many of the opening comments objecting to the Petition raised issues – such as copyright royalty fees – that not only lie outside of the scope of this proceeding, but are also outside the FCC’s

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1 The Radio Broadcasters Coalition consists of the following radio broadcast companies: Beasley Broadcast Group, Inc., Cox Enterprises Inc., Cromwell Group, Inc., Emmis Communications Corporation, Entercom Communications Corp., First Natchez Radio Group, Greater Media, Inc., Henson Media, Inc., and iHeartMedia, Inc. (“iHeartMedia”).

2 47 C.F.R. § 73.1212; see also 47 U.S.C. § 317.

3 See, e.g., Comments of the Recording Industry Association of America at 4 (“RIAA Comments”); Comments of the National Academy of Recording Arts & Sciences at 1.
authority. These objections aside, and as discussed in greater detail below, grant of the waiver request would promote the public interest by improving access to sponsorship identification information and directly benefit 21st century consumers by providing information in an easily accessible format.

I. GRANTING THE WAIVER WILL IMPROVE ACCESS TO SPONSORSHIP IDENTIFICATION INFORMATION.

A common theme amongst opponents of the Petition is that the waiver request is an attempt to weaken (or eliminate) the prohibition on payola. This is simply incorrect. Rather than eviscerate protections against payola, the requested waiver would result in easier and more useful public access to information about sponsored music and sports programming. As made clear in the Petition, “by granting the requested waiver, the FCC would preserve the existing SID requirement and the related prohibition on ‘payola,’ while allowing radio broadcasters airing music and sports programming and operating pursuant to the waiver to fulfill the requirement in a more flexible and consumer-friendly manner and with fewer interruptions.” Simply put, restrictions on payola would remain in full force if the waiver request were granted and more information, not less, would be available to the consumer. Placing SID information online allows consumers to access that information at their convenience in a user-friendly way when, where, and how they want it.

4 Indeed, the Recording Industry Association of America notes that royalty fee payments are a matter to be addressed “by Congress.” RIAA Comments at 4.

5 See., e.g., Comments of Gray Communications, Inc. at 2-3 (“Gray Comments”); Comments of Future of Music Coalition at 3-4 (“Future of Music Comments”); Comments of Mount Wilson FM Broadcasters, Inc. at 2-3 (“Mt. Wilson Comments”).

6 Petition at 2.

7 Grant of the Petition will not, of course, affect the way in which commercial advertisers (such as local car dealerships and national restaurant chains) promote their products, services, or
A straightforward comparison of current FCC SID rules and the requirements that would apply to programming aired pursuant to the requested waiver compel the conclusion that the proposed waiver would serve the public interest. The current rule requires only a statement that a program is “sponsored” or “paid for” by a third party and the identification of that party. The disclosure is available to the listener only over-the-air and only at the time of broadcast. By contrast, in order to qualify for the proposed waiver, a broadcaster would have to make available to the public vastly more information about the sponsorship arrangement, including the identity of the sponsoring company, all of the programs during which sponsored content is aired, the artists and songs played by the station that are affiliated with the sponsor, and the type of consideration received and provided by the station.\(^8\) This far greater quantity of information would be available online in a specially marked section of the station’s website 24/7 for as long as the sponsored programming airs. An on-air SID still would be broadcast once per day. As a result, and as the Media Institute pointed out in its Comments in support of the Petition, “the waiver sought by the Radio Broadcasters Coalition would take the transparency afforded by [the SID] disclosure requirements to a new level, allowing broadcasters to provide more information than ever by utilizing their websites as readily available sources of sponsorship information.”\(^9\)

It is also indisputable that people will go online for information. To suggest, as some commenters seem to, that consumers in 2015 and beyond are not likely to utilize the Internet to businesses on the radio. Commercial advertisements run by these companies will continue to include the advertiser’s name and other pertinent identification information so that the fact that they are sponsored, and the identity of the sponsor, is obvious to consumers.

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\(^8\) Petition at 3-4.

\(^9\) Comments of The Media Institute at 3.
obtain information is an unsupported, unfounded and, quite frankly, absurd assertion.10 Today, broadband and Internet connectivity are ubiquitous and “integral to daily life.”11 Consumers increasingly turn to the Internet to obtain more detailed information about everyday matters ranging from the mundane (comparing take-out menus, checking sports statistics) to the most vital (selecting a school, finding childcare, researching finances, and selecting healthcare).12 As Cumulus Media Inc. notes in its Comments in support of the Petition, the Commission itself has recognized that “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.’”13

Moreover, consumers today are untethered, able to access the Internet at any time and from anywhere using an ever-growing number of mobile devices. Indeed, a recent study by Nielsen indicates that 72% of the U.S. population has a smartphone.14 Mobile Internet adoption is occurring faster than did the adoption of earlier technologies such as television.15 In addition,

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10 See, e.g., Comments of the American Association of Independent Music at 2 (“A21M Comments”); Gray Comments at 4; Mt. Wilson Comments at 6.

11 Petition at 11 (according to a recent National Telecommunications and Information Administration survey, “the Internet has become integral to daily life in the United States, with some form of broadband . . . available to almost 99[%] of the U.S. population”) (citation omitted) (internal punctuation modified).

12 Id. at 10-11.

13 Comments of Cumulus Media Inc. at 4 (citation omitted).


consumers are increasingly using *multiple screens* in order to access content and information. One recent study indicates that 30% of simultaneous screen use occurs when consumers hear or see content on one platform and want to look-up related content on another.\(^\text{16}\) Clearly, consumers are paying attention and following up on content that interests them. Consumers interested in SID information would do likewise and, under the requested waiver, would be able to do so when, where, and how they want to. The Commission itself has recognized these trends, prioritizing broadband Internet access and, in particular, *mobile* broadband Internet access.\(^\text{17}\) Ignoring them in the context of the instant waiver request would be unexplainable and arbitrary.\(^\text{18}\)

II. GRANTING THE WAIVER WILL NOT ADVERSELY IMPACT BROADCASTERS’ INCENTIVES TO PROVIDE HIGH-QUALITY PROGRAMMING THAT SERVES LOCAL AUDIENCES AND PROVIDES OPPORTUNITIES FOR NEW ARTISTS.

Concerns about a decrease in program quality as a result of increased sponsored programming pursuant to a grant of the waiver request are speculative and alarmist.\(^\text{19}\) They also ignore the most basic economic, operational and philosophical tenets of radio broadcasting. Broadcasters have every incentive to provide their audiences with the right mix of programming,


\(^\text{17}\) Petition at 13-14; *see also In re Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, FCC 12-118, Dkt. No. 12-268 at ¶ 2 (rel. Oct. 2, 2012) (“The FCC has worked to free up spectrum for wireless broadband use through traditional approaches such as auctions, including clearing and reallocating government spectrum” and pursued initiatives “designed to facilitate the expansion of our nation’s wireless networks, the improvement of wireless broadband service, and the inclusion of all Americans in the growing wireless broadband environment.”)

\(^\text{18}\) Further, to accommodate the needs of the very small minority of Americans who currently lack Internet access (less than 1%, according to the NTIA), the same enhanced information would be available in person or by mail or fax, upon request. Petition at 4, 15 n.34.

\(^\text{19}\) *See, e.g.*, Future of Music Comments at 5.
whether sponsored or not. If a station were to make the “wrong choice” and increase sponsored content that its listeners did not demand or enjoy, the market would react negatively and the station would lose listeners. A loss of listeners, of course, translates into a loss of advertising revenue and, ultimately, financial harm. It is simply not in the interest of broadcasters to expand sponsored content in a manner that makes their programming less attractive to audiences.

The essence of radio broadcasting is localism. Members of the Radio Broadcasters Coalition continually strive to create the best listening experience for audiences in their communities of license, and make programming decisions based on their perceptions of what their local audiences want. For example, Henson Media owns two AM stations, one FM station and two FM translators in small markets in western Kentucky. Henson Media provides a wide variety of local programming, including airing approximately 120 high school football, boys and girls basketball, softball, baseball, and wrestling events. The waiver would help small market stations like Henson Media’s by allowing it to create more flexible packages for many of its small advertisers who use the stations to promote their companies and products.

The overriding importance of localism extends to entertainment programming, most notably music. For example, Greater Media radio stations strive to bring unique benefits to their individual markets. With a strong preference for great local talent and a prominent involvement in its communities, Greater Media’s goal is to build upon its loyal listener and customer base in each market it serves. For example, it recently replaced a syndicated morning show in Philadelphia with local talent Anthony Gargano and Jon Marks. It has a deep local commitment to music with its HD2 channels in Boston (Local 92.9) and Detroit (RIFF2), each of which features local independent bands that embody the spirit of “live and local.”
The music selected on each iHeartMedia station is selected by a local program director and his or her staff who are connected with the individual communities they serve. iHeartMedia spends millions of dollars each year on audience and market research that helps guide all of its stations in their programming decisions. iHeartMedia also has launched successful, local community-based initiatives in multiple markets for the express purpose of identifying and then promoting through airplay new bands and artists.

Other Radio Broadcasters Coalition members similarly endeavor to provide opportunities for new and emerging artists to bring their songs to the airwaves. For example, Cox Media Group (“CMG”) radio stations regularly conduct extensive local market research to determine what programming listeners in each of their individual markets and communities want to hear over the air. That research guides CMG’s programming decisions and leads CMG stations to air local talent and deliver local content. The granting of the waiver would actually allow CMG’s radio stations more time to deliver such local community-driven content. Entercom highly values local programming and several of its stations have initiatives in place in order to support this unique content. For example, KISW and KNDD in Seattle and KNRK in Portland feature daily and weekly segments with programming from local Pacific Northwest artists. KNRK HD2 in Portland exclusively features the programming of Pacific Northwest artists. These stations also broadcast announcements and conduct promotions encouraging local artists to submit their music for an opportunity to be featured on the stations and to perform at local concerts in their respective communities. The list can go on and on, but one thing is clear: the FCC’s grant of the narrowly targeted request for waiver of its SID rules would have no adverse impact upon a radio station’s selection of music programming or its commitment to localism and development and promotion of new local artistic talent.
In addition, as suggested by the Multicultural Media, Telecom and Internet Council ("MMTC") in their Comments in support of the Petition, granting the waiver request “would be of particular benefit to minority broadcasters and would contribute to create a climate favoring minority broadcasters’ access to capital.”20 As MMTC explains, SID requirements impose a “classic regressive sunk cost” that disproportionately affects small broadcasters because, under the current rules, SID announcements are aired during time that could otherwise be sold to advertisers.21 Because small broadcasters typically capture less advertising revenue than larger broadcasters, the cost of SID announcements represents a greater percentage of total operating costs.22 With higher costs and lower revenues, small broadcasters attract less interest from investors and therefore have a harder time accessing capital. Grant of the requested waiver would therefore improve the ability of small broadcasters to air high-quality local programming, including programming that results in an overall increase in local program diversity.

III. CONCLUSION

The Commission has ample authority to grant the requested waiver23 and, as shown above and in the Petition, doing so would be in the public interest.

Dated: May 12, 2015

[signature page follows]

20 Comments of the Multicultural Media, Telecom and Internet Council at 2.
21 Id.
22 Id.
23 Petition at 7-8.
Respectfully submitted,

Radio Broadcasters Coalition

/s/ Caroline Beasley
Caroline Beasley
Executive Vice President, Chief Financial Officer
Beasley Broadcast Group, Inc.
3033 Riviera Drive, Suite 200
Naples, FL 34103
239-263-5000

/s/ Barry Ohlson
Barry Ohlson
Vice President of Regulatory Affairs
Cox Enterprises Inc.
975 F Street, NW
Washington, DC 20004
202-637-1330

/s/ Bayard H. Walters
Bayard H. Walters
President
Cromwell Group, Inc.
1824 Murfreesboro Road
Nashville, TN 37217
615-361-7560

/s/ Ian D. Arnold
Ian D. Arnold
Vice President and Associate General Counsel
Emmis Communications Corporation
40 Monument Circle
Indianapolis, IN 46204
317-684-6542

/s/ Andrew P. Sutor, IV
Andrew P. Sutor, IV
Senior Vice President / General Counsel
Entercom Communications Corp.
401 E. City Avenue, Suite 809
Bala Cynwyd, PA 19004
610-660-5655

/s/ Margaret Cecilia Perkins
Margaret Cecilia Perkins
President / CEO
First Natchez Radio Group
PO Box 768
Natchez, MS 39121
601-442-4895

/s/ Ellen J. Rubin
Ellen J. Rubin
Vice President / General Counsel
Greater Media, Inc.
35 Braintree Hill Park, Suite 300
Braintree, MA 02184
781-348-8632

/s/ Edward Henson Jr.
Edward Henson Jr.
President
Henson Media, Inc.
1930 Bishop Lane, Suite 1009
Louisville, KY 40218
502-589-0060

/s/ Robert H. Walls, Jr.
Robert H. Walls, Jr.
Executive Vice President, General Counsel and Secretary
iHeartMedia, Inc.
200 East Basse Road
San Antonio, TX 78209
210-832-2000