

American Federation of Musicians (AFM)
American Federation of Television
and Radio Artists (AFTRA)
Association for Independent Music (AFIM)
Future of Music Coalition (FMC)
Just Plain Folks
Nashville Songwriters Association
International (NSAI)

National Association of
Recording Merchandisers (NARM)
National Federation of
Community Broadcasters (NFCB)
Recording Academy
Recording Industry Association of America (RIAA)

JOINT STATEMENT ON CURRENT ISSUES IN RADIO

May 24, 2002

We are a diverse coalition representing performing artist groups, labor, record labels, merchandisers, songwriters, community broadcasters, consumers and citizens advocates. We urge the government to revise the payola laws to cover independent promotion to radio, to investigate the impact of radio consolidation on the music community and citizens and to work to protect non-commercial space on both the terrestrial radio bandwidth and the emerging webcasting models.

Radio is a public asset, not private property. Since 1934, the federal government, through the Federal Communications Commission, has overseen the regulation and protection of this public asset to create a communications medium that serves the public interest. Unlike other businesses, radio stations have acquired their distribution mechanism – the airwaves – without any expenditure of capital. The public owns the airwaves. Owners of broadcast stations were given access to the broadcast spectrum by the government for free. The *quid pro quo* for free use of the public bandwidth requires that broadcast stations serve the public interest in their local communities.

However, it has become clear that both recording artists and citizens are negatively impacted by legislation, regulatory interpretations and by a number of standardized industry practices that fail to serve the public interest. We call on the Federal Communications Commission (FCC) to undertake a comprehensive review of the following aspects of the radio industry that are anti-artist, anti-competition and anti-consumer. Further, we call on Congress to be vigilant in their oversight of the FCC to ensure the public interest is being upheld in regards to radio.

Specifically:

1. We request that payments made to radio stations which are designed to influence playlists (other than legitimate and reasonable promotional expenses) be prohibited, unless such payments are announced over the air, even when such intent is subtle and disguised. This includes payments made through independent radio promoters.
2. We request an investigation of the impact of recent unprecedented increases in radio ownership consolidation on citizens and the music community.

3. We request an examination of the way vertical integration of ownership in broadcasting, concert promotion companies and venues decreases fair market competition for artists, clubs and promotion companies.
4. We request that policies that protect non-commercial space in the radio bandwidth and in the emerging webcasting models be enacted, securing the benefits of programming diversity for the music community and citizens.

BACKGROUND

Pay for Play and Independent Radio Promotion

Payola – the practice of paying money to people in exchange for playing a particular piece of music – has a long history in the music industry. The practice didn’t garner much public attention until the late 1950s and 1960s when rock and roll disc jockeys became powerful gatekeepers who determined what music the public heard. Federal laws were passed starting in the 1960s that forbid the direct payment or compensation of disc jockeys or other radio staff in exchange for the playing of certain records unless such payments were announced over the air.

The various laws and hearings from the 1960s-1970s muted the prominence of payola for a while. However, payola-like practices eventually resurfaced, but in a more indirect form. Standardized business practices now employed by many broadcasters and independent radio promoters result in what we consider a *de facto* form of payola. Often, in an effort to stay within the law, the payment is characterized as, for example, payment to receive first notice of the station’s playlist “adds.”

The new payola-like practices take two primary forms. Radio consolidation has created the first type. Radio station group owners establish exclusive arrangements with “independent promoters,” who then guarantee a fixed annual or monthly sum of money to the radio station group or individual station. In exchange for this payment, the radio station group agrees to give the independent promoter first notice of new songs added to its playlists each week. Stations in the group also tend to play mostly records that have been suggested by the independent promoter. As a result of the standardization of this practice, record companies and artists generally must pay the radio stations’ independent promoters if they want to be considered for airplay on those stations.

The second payola-like practice occurs after the music labels hire an “independent radio promoter” to legitimately promote their records to specific stations for a fee. Reportedly, certain indie promoters use the labels’ money to pay the stations for playing songs on the air.¹

¹ Boehlert, Eric. “Pay for Play”, Salon.com, March 14, 2001.
<http://www.salon.com/ent/feature/2001/03/14/payola/index.html>

These practices result in “bottom line” programming decisions where questions of artistic merit and community responsiveness take a back seat to the desire of broadcasters to gain additional revenue. As a result, many new and independent artists, as well as many established artists, are denied valuable radio airplay they would receive if programming decisions were more objective. Furthermore, whatever form the pay-for-play takes, these “promotion” costs are often shared by the artists and adversely impact the ability of recording artists to succeed financially.

To protect the public interest, we request the payola prohibition be revised by the FCC so that it cannot be circumvented by any entity via the use of independent promoters. If the music played on the radio has less to do with the quality of the song than the economics of the business arrangement, how does this serve the needs of citizens? Also, when payments are not announced, isn't the public misled into thinking that the station chooses which songs to broadcast based on merit?

Impact of Widespread Industry Consolidation

The federal government must also examine the impact of loosened ownership caps on the listening public. Until 1996, the Federal Communications Commission regulated ownership of broadcast stations so any company could own no more than two radio stations in any one market and no more than 40 nationwide. When Congress passed the Telecommunications Act of 1996, the restrictions governing ownership of radio stations evaporated. Now, radio groups own numerous stations around the country and exercise unreasonable control over the airwaves. For example, in 1996, there were 5133 owners of radio stations.² Today, for the Contemporary Hit Radio/Top 40 formats, only four radio station groups – Chancellor, Clear Channel, Infinity and Capstar – control access to 63 percent of the format's 41 million listeners nationwide. For the country format, the *same* four groups control access to 56 percent of the format's 28 millions listeners.³

This consolidation has led to a new dynamic in the music industry. Radio station groups have centralized their decision-making about playlists and which new songs to add to the playlist. These centralized playlists have reduced the local flavor and limited the diversity of music played on radio. Due to their sheer market power, radio station groups now have the ability to make or break a hit song.⁴

With the increased leverage resulting from ownership consolidation, at least one group owner is considering charging labels for merely identifying the name of the artist and song played. The CEO of Clear Channel told the *Los Angeles Times* that it might sell song identification as a form of advertising. This miserly practice would harm the music community and citizens, as it would make it difficult for radio listeners to identify new artists and purchase music. Once again, this practice would impact the ability of new and independent artists to succeed.

² “State of the Radio Industry 2000”, Federal Communications Commission.

³ Wirth, Todd. “Nationwide Format Oligopolies”, *Journal of Radio Studies*, VIII (2), (2001), 255.

⁴ Wirth, 249-250.

We request that the FCC investigate consolidation of radio ownership focusing on the public interest which radio stations are supposed to serve. This investigation should look at the difficulties small independent broadcasters face when going up against large and powerful radio station groups in a specific market. It should study the role that national playlist decisions have had on the skyrocketing cost of radio promotion. It should also take into account the impact of reduced staffing levels on members of local stations and the reduction of classical, jazz, bluegrass and other formats from the airwaves.

Vertical Integration of Radio Owners

Many radio groups are also vertically integrated companies increasing their already substantial leverage and control. For example, Clear Channel, a company that owns over 1200 radio stations, also owns tens of thousands of billboards, and various promotion companies and venues. In 1999 Clear Channel purchased SFX Entertainment, the nation's most powerful concert promoter. This gave Clear Channel control of the concert promotion industry in most of the key regions of the US virtually overnight. Clear Channel therefore has a direct economic interest in promoting its own concerts and tours on its numerous radio stations over those of the competition. It also has an interest in limiting the promotional support of bands and artists who are performing for other companies, at other venues or who are sponsored by other stations.

Some of the remaining independent concert promoters have alleged that Clear Channel is engaging in anti-competitive behavior by using this leverage to force smaller companies out of business. In particular, the mid-size promoter NIPP in Denver brought suit against Clear Channel in 2001, alleging that Clear Channel – which owns all three rock stations in the Denver area – was not running the ads that NIPP paid for on its stations to promote last year's NIPP-promoted Warped Tour.⁵ There have been other allegations from bands and performers – mostly off-the-record for fear of retaliation – who have stated that radio station groups have pressured them into playing shows for free in exchange for airplay, or who have had their songs removed from playlists for playing non-exclusive venues.⁶

We would like to see the FCC investigate whether an artist's choice to play or not to play in Clear Channel venues or to use or not to use Clear Channel's promotion company impacts the artist's positions on or removal from Clear Channel playlists.

⁵ Adler, Carlye. "Backstage Brawl", *Fortune Magazine*, March 4, 2002.
http://www.fortune.com/indexw.jhtml?channel=artcol.jhtml&doc_id=206526
Ahrens, Frank. "Making Radio Waves", *Washington Post*, August 22, 2001.
<http://www.washingtonpost.com/ac2/wp-dyn/A43817-2001Aug21?language=printer>

⁶ Boehlert, Eric. "Rock n Radio Rumble", *Salon.com*, August 8, 2001.
http://www.salon.com/ent/clear_channel/2001/08/08/riverbend/index.html

Community Radio

Rampant consolidation of commercial radio and increased budgetary pressures felt by non-commercial stations have led to a reduction in radio play for musical genres like classical, jazz, opera and bluegrass. Congress needs to reevaluate the current status of non-commercial radio, including exploring new strategies for sustaining existing community radio stations and moving forward with full implementation of community-based Low Power FM radio. After an intense lobbying campaign by the National Association of Broadcasters and NPR, the FCC's Low Power FM plan was scaled back significantly via an Appropriations rider in 2000. The FCC is currently following Congress' request for additional testing of the impact of these tiny stations on existing broadcasters. Once the FCC report is submitted to Congress, Congress must move forward by passing legislation to authorize the FCC to license these stations in urban areas. If consolidation in the radio environment has stifled competition and reduced diversity of programming, low power radio can begin to address the lack of community-based programming.

Conclusion

We are deeply concerned about payola and payola-like practices, as well as the problems caused by radio station ownership consolidation, and the vertical integration of station ownership with venue ownership and concert promoters. New rules must be written by the FCC to prohibit payments to radio stations from "independent promoters" unless such payments are announced. The FCC must seriously evaluate whether a radio station is even satisfying the current license requirement that sponsorship identification or disclosure must accompany any material that is broadcast in exchange for money, service, or anything else of value paid to a station, either directly or indirectly. The FCC should also consider whether radio stations are serving the public interest by contributing to localism and independence in broadcasting. Finally, Congress must be vigilant in ensuring that the FCC is upholding the public interest in all of these matters.

Respectfully submitted by the following organizations:

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