

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

In the Matter of )  
 )  
**MusicFIRST Coalition Petition Regarding** ) **MB Docket No. 09-143**  
**The Actions Of Certain Radio Broadcasters** )  
**In Opposition To The Performance Rights Act** )

To The Chief, Media Bureau

**COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL**

The Minority Media and Telecommunications Council (“MMTC”) respectfully submits these comments<sup>1</sup> in response to the Media Bureau’s Public Notice<sup>2</sup> seeking comment on MusicFIRST Coalition’s (“MusicFIRST”) Request for Declaratory Relief.<sup>3</sup> MMTC opposes MusicFIRST’s request.

Whether or not the Commission has the authority to direct broadcasters to air particular advertisements, we would caution that many broadcasters, in good faith, regard MusicFirst’s arguments as inherently misleading<sup>4</sup> both because of what MusicFirst’s advertisements say<sup>5</sup> and because of what they conspicuously do not say.<sup>6</sup>

---

1 These Comments reflects the institutional views of MMTC and is not intended to reflect the views of individual MMTC officers, directors or advisors.

2 See Public Notice, 24 FCC Rcd 10298 (Media Bureau, August 7, 2009).

3 Request for Declaratory Relief, MusicFIRST Coalition (filed June 9, 2009) (“MusicFIRST Petition”).

4 Cf. Elimination of Unnecessary Broadcast Regulation, 57 RR2d 913 (1985) (broadcasters may refuse to air advertisements that may be deceptive).

5 To give one example, MusicFIRST asserts that broadcasters are “making the false claim that legislative hearings on the pending Performance Royalty legislation ‘did not have any black ownership representation.’” MusicFIRST Petition at 7 (citing Declaration of Jennifer L. Bendall at ¶ 8). The testimony of Charles Warfield cited by MusicFIRST was presented during a July 2007 hearing – over sixteen months before the pending legislation was introduced.

6 MMTC has conservatively estimated that H.R. 848 and S.379 would throw at least one-third of minority owned stations over the cliff into bankruptcy. The National Association of Media Brokers (“NAMB”) agrees, adding that “the imposition of a performance royalty on over-the air broadcast stations will be crippling to the broadcast industry in general, and be particularly

The best way for the Commission to advance consumers' access to information is to promote ownership and employment diversity, rather than regulating content. Several diversity matters are long-pending,<sup>7</sup> and MMTC encourages the Commission to address them.

Respectfully submitted,

*David Honig*

David Honig  
Executive Director  
Joycelyn F. James  
John W. Jones Fellow  
Minority Media and Telecommunications Council  
3636 16<sup>th</sup> Street NW, Suite B-366  
Washington, D.C. 20010  
(202) 332-0500  
[dhonig@crosslink.net](mailto:dhonig@crosslink.net)

Of Counsel:

Joycelyn Tate  
Director of Telecommunications Policy  
Minority Media and Telecommunications Council

September 7, 2009

---

devastating to minority broadcasters and other new entrants to the industry.” See Letter to Hon. Nancy Pelosi from Richard L. Kozacko, Treasurer, NAMB, regarding Performance Royalty Impact on Minority and Small Market Rural Radio Stations (June 8, 2009) at 1.

7 See, e.g., Career Advancement Subcommittee Recommendation, Advisory Committee on Diversity for Communications in the Digital Age (December 10, 2004), seeking a reprioritization of broadcast EEO regulation to emphasize retention and mentoring, available at [http://www.fcc.gov/DiversityFAC/041210/career\\_advancement.pdf](http://www.fcc.gov/DiversityFAC/041210/career_advancement.pdf) (last visited September 4, 2009) (pending almost five years); Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Report and Recommendations to the Federal Communications Commission (2006) at p. 41, endorsing multilingual EAS relief originally proposed by MMTC et al. after Hurricane Katrina (pending four years); MMTC Letter to Chairman Martin re: Nondiscrimination in Advertising Sales Contracts, MB Docket No. 07-294 (filed July 17, 2008), seeking a compliance officer for the Advertising Nondiscrimination Rule (pending over a year).