

109TH CONGRESS
1ST SESSION

S. 2058

To promote transparency and reduce anti-competitive practices in the radio
and concert industries.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2005

Mr. FEINGOLD introduced the following bill; which was read twice and
referred to the Committee on Commerce, Science, and Transportation

A BILL

To promote transparency and reduce anti-competitive
practices in the radio and concert industries.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Radio and Concert
5 Disclosure and Competition Act of 2005”.

6 **SEC. 2. DISCLOSURE REGULATIONS.**

7 (a) MODIFICATION OF REGULATIONS.—

8 (1) IN GENERAL.—Not later than 1 year after
9 the date of the enactment of this Act, the Federal
10 Communications Commission shall modify its regula-

1 tions under sections 317 and 507 of the Commu-
2 nications Act of 1934 (47 U.S.C. 317 and 508), to
3 prohibit the licensee or permittee of any radio sta-
4 tion, including any employee or affiliate of such li-
5 censee or permittee, from receiving money, services,
6 or other valuable consideration, whether directly or
7 indirectly, from a record company, recording artist,
8 concert promoter, music promoter, or music pub-
9 lisher, or an agent or representative thereof, unless
10 the licensee or permittee discloses at least monthly
11 the receipt of such money, services, or other consid-
12 eration to the Federal Communications Commission
13 (in this Act referred to as the “Commission”) and
14 the public in a manner that the Commission shall
15 specify.

16 (2) EXCEPTION.—The Commission in modi-
17 fying its regulations as required under paragraph
18 (1) may create an exception to the prohibition de-
19 scribed under paragraph (1) for—

20 (A) transactions provided at nominal cost;

21 or

22 (B) paid broadcasting disclosed under sec-
23 tion 317 of the Communications Act of 1934
24 (47 U.S.C. 317), if the monthly disclosure de-

1 scribed in paragraph (1) includes the proportion
2 of total airplay considered paid broadcasting.

3 (b) **PLAYLIST.**—The monthly disclosure by a radio
4 station licensee or permittee required under subsection (a)
5 shall include a list of songs and musical recordings aired
6 during the disclosure period, indicating the artist, record
7 label, and number of times the song was aired.

8 **SEC. 3. ARM'S LENGTH TRANSACTIONS.**

9 (a) **IN GENERAL.**—Not later than 1 year after the
10 date of the enactment of this Act, the Federal Commu-
11 nications Commission shall modify its regulations under
12 sections 317 and 507 of the Communications Act of 1934
13 (47 U.S.C. 317 and 508), to require that all transactions
14 between a licensee or permittee of any radio station, in-
15 cluding any employee or affiliate of such licensee or per-
16 mittee, and a record company, recording artist, concert
17 promoter, music promoter, or music publisher, or an agent
18 or representative thereof, shall be conducted at an arm's
19 length basis with any such transaction reduced to writing
20 and retained by the licensee or permittee for the period
21 of the license term or 5 years, whichever is greater.

22 (b) **RECORDS.**—A record of each transaction de-
23 scribed under subsection (a) shall be—

24 (1) made available upon request to—

25 (A) the Commission; and

1 (B) any State enforcement agency; and

2 (2) subject to a random audit by the Commis-
 3 sion to ensure compliance on a basis to be deter-
 4 mined by the Commission.

5 (c) EXEMPTION.—The Commission may create an ex-
 6 emption to the record keeping requirement described in
 7 subsection (b)—

8 (1) for a transaction that is of a nominal value;
 9 and

10 (2) for a radio station that is a small business,
 11 as recognized by the Commission and established by
 12 the Small Business Administration under section
 13 121 of title 13, Code of Federal Regulations, if the
 14 Commission determines that such record keeping
 15 poses an undue burden to that small business.

16 **SEC. 4. COMPETITION REGULATIONS.**

17 Not later than 1 year after the date of the enactment
 18 of this Act, the Federal Communications Commission shall
 19 modify its regulations under sections 317 and 507 of the
 20 Communications Act of 1934 (47 U.S.C. 317 and 508),
 21 to accomplish the following:

22 (1) GENERAL PROHIBITION.—To prohibit the
 23 licensee of any radio station, including any parent,
 24 subsidiary, or affiliated entity of such licensee, from
 25 using its control over any non-advertising matter

1 broadcast by such licensee to extract or receive
2 money or any other form of consideration, whether
3 directly or indirectly, from a record company, artist,
4 concert promoter, or any agent or representative
5 thereof.

6 (2) RADIO STATION CONCERTS.—

7 (A) IN GENERAL.—To prohibit a licensee
8 or permittee of a commercial radio station, or
9 affiliate thereof, from—

10 (i) engaging, receiving, making an
11 offer for, or directly profiting from concert
12 services of any musician or recording artist
13 unless the licensee or permittee does not
14 discriminate, in whole or in part, about the
15 broadcast of non-advertising matter, in-
16 cluding any sound recording, by that par-
17 ticular artist upon whether or not that art-
18 ist performs at the radio station affiliated
19 concert; and

20 (ii) engaging or receiving concert serv-
21 ices of any musician or recording artist un-
22 less the licensee or permittee provides the
23 musician or recording artist with com-
24 pensation for such services at the fair mar-
25 ket value for the performance.

1 (B) DEFINITION.—For purposes of sub-
2 paragraph (A), the term “fair market value”
3 shall include such factors as—

4 (i) the rate typically charged by the
5 musician or recording artist for a concert
6 of the size being put on for the station;

7 (ii) the expenses of the musician or
8 recording artist to travel to, and perform
9 at, the concert location; and

10 (iii) the length of the performance in
11 relation to the standard duration for a con-
12 cert by the musician or recording artist.

13 (C) LIMITATIONS AND EXCLUSIONS.—The
14 provisions of this paragraph shall not—

15 (i) prohibit consideration for the con-
16 cert services being made in the form of
17 promotional value, cash, or a combination
18 of both; or

19 (ii) apply to—

20 (I) a radio station that is a small
21 business, as recognized by the Com-
22 mission and established by the Small
23 Business Administration under section
24 121 of title 13, Code of Federal Regu-
25 lations;

1 (II) in-studio live interviews and
2 performances; or

3 (III) concerts whose proceeds are
4 intended and provided for charitable
5 purposes.

6 (3) RADIO AND CONCERT CROSS-OWNERSHIP.—

7 (A) IN GENERAL.—To prohibit a licensee
8 or permittee of a radio station, or affiliate
9 thereof, from owning or controlling a concert
10 promoter or venue primarily used for live con-
11 cert performances.

12 (B) WAIVER.—The Commission may waive
13 the prohibition required under subparagraph
14 (A) if—

15 (i) the Commission determines that
16 because of the nature of the cross-owner-
17 ship and market served—

18 (I) the affected radio station,
19 concert promoter, or venue would be
20 subjected to undue economic distress
21 or would not be economically viable if
22 such provisions were enforced; and

23 (II) the anti-competitive effects
24 of the proposed transaction are clearly
25 outweighed in the public interest by

1 the probable effect of the transaction
 2 in meeting the needs of the commu-
 3 nity to be served; and

4 (ii) the affected radio station, concert
 5 promoter, or venue demonstrates to the
 6 Commission that decisions regarding the
 7 broadcast of matter, including any sound
 8 recording, will be made at arm's length
 9 and not based, in whole or in part, upon
 10 whether or not the creator, producer, or
 11 promoter of such matter engages the serv-
 12 ices of the licensee or permittee, or an af-
 13 filiate thereof.

14 **SEC. 5. REVIEW OF TRANSACTIONS.**

15 (a) IN GENERAL.—Upon petition by a musician, re-
 16 cording artist, or interested party, the Commission shall
 17 review any transaction entered into under section 3 or sec-
 18 tion 4.

19 (b) COPY OF PETITION.—A copy of any petition sub-
 20 mitted to Commission under subsection (a) shall be pro-
 21 vided by the person filing such petition to the licensee or
 22 permittee, or musician or recording artist, as applicable.

23 (c) PUBLIC DISCLOSURE.—If the Commission, after
 24 reviewing a petition submitted under subsection (a) finds
 25 a transaction violated any provision of this paragraph or

1 section 3, the Commission shall publicly, after all parties
2 have had a reasonable opportunity to comment, disclose
3 its finding and grant appropriate relief.

4 **SEC. 6. PENALTIES.**

5 The regulations promulgated under sections 2, 3 and
6 4 shall set forth appropriate penalties for violations includ-
7 ing an immediate hearing before the Commission upon the
8 issuance of a notice of apparent liability or violation, with
9 possible penalties to include license revocation.

10 **SEC. 7. REPORT.**

11 Not later than 2 years after the date of enactment
12 of this Act, and every 2 years thereafter, the Commission
13 shall issue a report to Congress and the public that—

14 (1) summarizes the disclosures made by licens-
15 ees and permittees as required under section 2;

16 (2) summarizes the audits conducted by the
17 Commission as required under section 3(b)(2);

18 (3) summarizes the cross-ownership waivers, if
19 any, awarded by the Commission under section
20 4(3)(B);

21 (4) evaluates ownership concentration and mar-
22 ket power in the radio industry in a manner similar
23 to the most recent in the discontinued series of FCC
24 reports, “Radio Industry Review 2002: Trends in
25 Ownership, Format, and Finance”; and

1 (5) describes any violations of section 2, 3, or
 2 4, and penalty proceedings under section 6, and in-
 3 cludes recommendations for any additional statutory
 4 authority the Commission determines would improve
 5 compliance with regulations issued under this Act.

6 **SEC. 8. LICENSE REVOCATION.**

7 Section 312(a) of the Communications Act of 1934
 8 (47 U.S.C. 312) is amended—

9 (1) in paragraph (6), by striking “; or” and in-
 10 serting a semicolon;

11 (2) in paragraph (7), by striking the period at
 12 the end and inserting “; or”; and

13 (3) by adding at the end the following:

14 “(8) for violation of or failure to follow any reg-
 15 ulation established in accordance with section 2, 3,
 16 4, or 6 of the Radio and Concert Disclosure and
 17 Competition Act of 2005.”.

18 **SEC. 9. INCREASED MAXIMUM PENALTIES.**

19 (a) **PENALTIES FOR DISCLOSURE OF PAYMENTS TO**
 20 **INDIVIDUALS CONNECTED WITH BROADCASTS.**—Section
 21 507(g)(1) of the Communications Act of 1934 (47 U.S.C.
 22 508(g)(1)) is amended by striking “\$10,000” and insert-
 23 ing “\$50,000”.

24 (b) **PENALTIES FOR PROHIBITED PRACTICES IN**
 25 **CONTESTS OF KNOWLEDGE, SKILL, OR CHANCE.**—Sec-

1 tion 508(c)(1) of the Communications Act of 1934 (47
2 U.S.C. 509(c)(1)) is amended—

3 (1) by striking “\$10,000” and inserting
4 “\$50,000”; and

5 (2) by inserting “, for each violation” before the
6 period.

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