Hearing on H.R. 848,
the "Performance Rights Act"

United States House of Representatives
Committee on the Judiciary

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Statement of W. Lawrence Patrick
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Good morning, Chairman Conyers, Ranking Member Smith and members of the Committee. My name is Larry Patrick, I am here in my capacity as Managing Partner of Patrick Communications LLC, a media brokerage firm based in Elkridge, Maryland. I will also add that I am a radio broadcaster, and my company, Legend Communications, owns 14 stations in Wyoming. I hold both a Ph.D. in communications management from Ohio University as well as a law degree from Georgetown. I have been in and around the radio industry for 40 years, and I believe that the fees associated with the enactment of H.R. 848 will jeopardize the viability of many local radio stations.

In my capacity as Managing Partner of Patrick Communications, I have extensive media brokerage experience. My firm has negotiated or consulted on over 500 radio and 150 television transactions valued in excess of $6.5 billion in the past 15 years. My clients have included over 60 major banks, many Wall Street investment firms, the Internal Revenue Service, the Justice Department as well as scores of both publicly and privately-held communications companies ranging from the largest group owners to mom-and-pop stations.

As I noted, I have been a part of the radio industry for 40 years, and I can tell you that over the course of my career, I have never seen what the radio industry is currently experiencing. The economic downturn is having a significant and devastating effect on local radio. The industry faces sinking revenues, layoffs and tightening budgets. But the current local radio landscape will deteriorate even further and more dramatically if H.R. 848 were to be enacted. Let me share with you where the radio industry is now, and what I believe a new performance fee will mean to local radio stations across America.

Headlines in the trade press speak daily of steep revenue declines of 25 percent or more. I have spent most of the last year dealing almost exclusively with station workouts, loan defaults and bankruptcy filings involving stations large and small. There is no doubt that times are tough in the radio industry. As an industry totally reliant on advertising revenues, radio is feeling the impact of severely reduced advertising budgets that are a direct result of the current economic recession in the country.

In 2008, radio finished the year down 9%. In her latest note to investors, Wells Fargo analyst Marci Ryvicker revised her already negative 2009 prediction of an 8% downward turn, to now forecasting a 13% drop in revenues -- and that’s if the radio industry is lucky. She warned that this forecast may be "too optimistic." Ryvicker painted a picture of an industry in freefall, with no chance of a turnaround until the economy recovers or credit markets improve. I personally know of radio stations that are seeing a 35 to as much as a 50 percent revenue decline.

This discouraging forecast follows a broader vision outlined by radio veteran Mark Hubbard. In his essay on the outlook for radio, published online by the Radio Ink Web site, Hubbard believes that "[c]ommercial radio has never been more challenged since its creation in the 1920s.”

Of course radio--like virtually every industry--is suffering the effects of the financial meltdown and paralysis in the credit markets, which make it difficult if not impossible to finance acquisitions. I know of dozens of radio station owners, many in their 60s or 70s, who would like to sell their stations and retire but cannot find any buyer capable of financing a purchase in today’s world.

Similar to the annual revenues projections, BIA estimates radio station revenues will hit $16.7 billion in 2008, the lowest in more than five years and part of a downward spiral that will fall as low as $15 billion in 2009 and $14.2 billion in 2010. This compares to a high of $21.0 million just a year or two ago.

To put this in perspective and give you an idea of scale, there are approximately 13,000 radio stations in the U.S. that share in that $16.7 billion in revenues. In the recording industry, the $10 billion in U.S. revenues is primarily split between only four large corporations.

Almost every publicly-traded radio company is in default with their lenders and many are facing de-listing of their stock from the exchanges. Right now, I am advising lenders and investors on nearly a dozen workouts of radio companies involving well over 300 radio stations. We are facing an economic downturn sharper and steeper than I have ever witnessed.

In fact, just last Thursday, the New York Stock Exchange said that it would suspend trading on the common stock of Citadel Broadcasting prior to the opening of the market on Friday, March 6. The delisting comes after

Citadel's shares had fallen below the continued listing criteria related to minimum average market capitalization for over a 30-day trading period. The company submitted a business plan to address non-compliance, but after review, NYSE decided to proceed with suspension of trading.

Another headline last week was that Saga Communications became the latest radio company to ask employees to take a pay cut in light of the troubled economic climate. A five percent companywide salary reduction is set to go into effect March 13. Saga President and CEO Ed Christian told employees in a memo that the company is "challenged as we have never been before."

Salem Communications, Radio One, Cumulus, Entercom, Beasley Broadcasting, Emmis, Fisher and dozens of others have similarly reduced company-wide compensation five to 10 percent. The radio industry is tightening its belt and moving forward into a world of financial uncertainty that none of us ever have ever experienced.

What I’ve described is the economic reality that the radio industry is facing right now. And having watched the radio industry for 40 years, I can sit here and tell you that the new fees that will be levied under H.R. 848 will do significant damage to local radio stations across the country that are already hurting financially.

The imposition of additional fees on radio for the recording industry, rather than recognizing the enormous and continuing promotional value that radio has delivered to the music industry for decades, will only cripple or destroy many stations. Any further station costs will only push more stations into tripping their loan covenants and more workouts. Station owners will further reduce staffing and services which only hurt the local listeners while enriching the music labels.

The labels suggest that they would not harm the small market operators by imposing only a $5,000 annual fee on each of these operators. I am a small market radio operator also and I know how much this will hurt. I know hundreds of small market radio owners who barely make $25,000 a year from their stations. To pay this fee, even a $5000 fee, they would have to eliminate covering high school sports, local origination and would reduce their staffing further. Any additional fees also threaten their ability to provide emergency broadcast services that are so critical to the thousands of small towns across the country.

The recording industry has argued in the past that, if the new performance fee was adopted, stations could simply raise their advertising rates to get the money to pay for the new fee. I have to debunk that assumption. If radio broadcasters could get more money for their advertising spots, why wouldn't they be doing that already? But this question is far more difficult to answer in the radio environment we find ourselves in today. Ad rates are dropping sharply, not increasing.

As I've noted above, revenues are down. Layoffs are hitting stations in nearly every market. In this environment, it is difficult to imagine how any performance fee could be paid by broadcasters without eating into their fundamental ability to serve the public, and perhaps to threaten the very existence of many music-intensive stations. The recording industry is living in a fantasy world here that it is divorced from the critical financial position in which almost every station finds itself today.

The structure of the performance fee, as it is proposed in H.R. 848, makes the whole question of affordability even harder to address because it delegates that rate-making decision to the Copyright Royalty Board.

We do know that SoundExchange has consistently argued in other royalty proceedings that the sound recording royalty is far more valuable than the composition royalty. In some proceedings, it has asked for a royalty over six times the amount of the composition royalty. At the House Judiciary Committee hearing held on July 31, 2007, when asked how much the performance fee would be, Marybeth Peters, the Register of Copyrights, suggested that it could a be simple matter of applying the "willing buyer, willing seller" criteria of Section 114 of the Copyright Act to broadcasting. Of course, that standard is the same standard that led to the current Internet radio royalties which have been so controversial.

In the satellite radio context, SoundExchange suggested a royalty of 10 percent of satellite radio's gross revenue for 2007, rising to 23 percent of the satellite radio services' gross revenue for 2012, the last year of the royalty period for those services. For cable radio, SoundExchange proposed a royalty beginning at 15 percent of revenue for 2008 and increasing to 30 percent of cable radio's gross revenue for 2013, the last year of the royalty period for those services.

Moreover, H.R. 848 states that the imposition of the performance fee on sound recordings is not to have any effect on the amount that broadcasters pay to ASCAP, BMI and SESAC. Thus, the money would *by necessity* have to come from other radio station operations.

At this time, stations are laying off employees, reducing wages by 5-10 percent and a number of radio companies are literally teetering on the verge of bankruptcy. If this bill is enacted, it will put at risk an industry that employs nearly 106,000 people across America. I am not understating the situation when I say that such extraordinary fees imposed on local radio stations in light of the current economic plight of local radio could absolutely devastating. I strongly urge you to oppose H.R. 848.