Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Noncommercial Educational Station Fundraising	)	
for Third-Party Non-Profit Organizations	)	MB Docket No. 12-106
	)	
	)	

To: The Commission

COMMENTS OF NATIONAL PUBLIC RADIO, INC.

Joyce Slocum
Chief Administrative Officer and
General Counsel
Michael Riksen
Vice President, Policy & Representation
Michael Starling
Chief Technology Officer and
Executive Director, NPR Labs
Rishi Hingoraney
Director of Public Policy and Legislation
John Kean
Senior Technologist
Gregory A. Lewis
Deputy General Counsel

635 Massachusetts Avenue, N.W.
Washington, DC 20001
202/513-2040

July 23, 2012

Summary

The Commission's current rule prohibiting noncommercial educational ("NCE") broadcast stations from interrupting programming to fundraise for third party nonprofits represents a careful balance between the financial needs of local stations and their mission to operate an essentially noncommercial service. In proposing to relax this prohibition, the Commission should be careful not to undermine this balance, especially in light of the existing flexibility afforded to stations by the current rule, and the presence of serious concerns about the impact of the proposal on local station service.

Stations are able to utilize the existing waiver process to fundraise under limited circumstances for nonprofit causes in their communities and elsewhere, rendering the proposed changes unnecessary.

Moreover, changing the rules to allow for third party fundraising raises serious concerns and may negatively impact stations' abilities to serve their communities. Specifically, removing the prohibition on third-party fundraising would create the potential for stations to be inundated with requests from local nonprofits, jeopardizing relationships with potential programming partners and imposing an administrative burden on station staff. In addition, adopting the Commission's proposal could subject stations to undue pressure from affiliated entities. Perhaps most importantly, a removal of the prohibition may also undermine stations' ability to raise funds from their members, who are vital to stations' economic well-being.

Table of Contents

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations	))	MB Docket No. 12-106
	)	
	)	

To: The Commission

COMMENTS OF NATIONAL PUBLIC RADIO, INC.

Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding seeking comment on proposals to amend the Commission's Rules to allow noncommercial educational ("NCE") broadcast stations to interrupt programming to fundraise for third-party nonprofits.[1]

NPR is a non-profit membership corporation that produces and distributes noncommercial educational programming through more than 900 public radio stations nationwide. In addition to broadcasting award winning NPR programming, including *All Things Considered*® and *Morning Edition*®, NPR affiliated stations are significant producers of local,

[1] See In the Matter of Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations, Notice of Proposed Rulemaking, 27 FCC Rcd 4515 (rel. Apr. 26, 2012) ("NPRM").

regional, and national news, information, and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its Member stations.

I. The Current Commission Rules Represent a Careful Balance that the Commission Should Avoid Undermining

Under current Commission rules, NCE broadcast stations may not conduct fundraising activities that substantially alter or suspend regular programming and are designed to benefit any entity other than the station itself.[2] The Commission implemented this policy to reflect the concern that "educational stations are licensed to provide a noncommercial broadcast service, not to serve as a fundraising operation for other entities by broadcasting material that is 'akin to regular advertising.'"[3]

As the Commission notes in its NPRM, over the years it has relaxed some of its policies governing the broadcast of underwriting announcements by NCE stations in order to allow stations to more effectively raise funds to support core programming.[4] For example, in 1981, the Commission determined that NCE stations could acknowledge contributions made by donors through "enhanced" underwriting announcements, but it continued to prohibit the broadcast of

[2] 47 C.F.R. 73.503; In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, Memorandum Opinion and Order, 90 F.C.C.2d 895, 907 (1982) ("1982 Memorandum Opinion and Order").

[3] In Re Request by Ohio State Univ., Columbus, Ohio for Waiver of Sections 73.503 & 73.621 of Comm'n's Rules, 62 F.C.C.2d 449, 450 (1976) ("Ohio State Univ.").

[4] See Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, Second Report and Order, 86 F.C.C.2d 141, ¶ 3 (1981) (noting that "substantial funding for public broadcaster programming is derived from business establishments in the form of grants or gifts and that acknowledgement of those funds is proper and possibly necessary to assure the continuation of such funding.")

promotional announcements in exchange for consideration.[5] Subsequent revisions following Congressional enactment of Section 399b of the Communications Act, 47 U.S.C §399b, still maintained the prohibition on interrupting programming to fundraise for third parties.[6] By design, these revisions struck a reasonable balance between legitimate financial needs of stations — which rely in part on support from local underwriters — and the need to preserve the unique and compelling noncommercial programming offered by NCE stations.

The Commission offers no evidence that the underlying rationale for its policy has lost its persuasiveness. Indeed, it concedes that, "the original concerns animating the longstanding restriction" upon these activities remain valid today.[7] Public radio stations serve the educational, cultural, and informational needs of the public by providing a unique lineup of national and local programming that strives to meet community needs and to maximize program quality rather than audience size. The distinctive program services offered by public radio stations are directly attributable to their insulation from commercial market forces. The balance struck by the Commission in crafting the present rules has allowed local stations to raise critical operating funds from the non-promotional announcements authorized by the Commission, while avoiding the commercializing forces that would ensue if the station served as the fundraising arm of local nonprofits. Removing the prohibition on third-party fundraising today — as it has reasoned in the past — would upset this balance by transforming local public radio stations into the very entities the Commission sought to avoid: those broadcasting material that is "akin to regular

---

[5]See id. at 142-144 & 155, ¶¶ 4, 7-8 & 37.

[6]See 1982 Memorandum Opinion and Order, at 901.

[7]NPRM, 27 FCC Rcd. at 4519.

advertising."[8] Importantly, unlike prior rule revisions, the proposed changes would primarily benefit third parties, not the station itself and the audience it serves.

II. The Current Framework Meets the Needs of NPR Member Stations by Allowing Them to Fundraise for Local Nonprofits Under Limited Circumstances

Current Commission rules allow for discrete, limited duration waivers of the prohibition on third-party fundraising, most commonly in order to allow stations to raise funds for communities impacted by natural and man-made disasters. Public radio stations have occasionally and successfully availed themselves of this process, which has imposed a limited administrative burden on both station management and Commission staff.[9] Waivers of this type allow stations to leverage their wide reach and fundraising expertise for the benefit of communities in dire need. However, these waivers are typically narrow in scope and duration, reflecting the exceptional nature of the circumstances that justify diverting airtime away from core public radio broadcast station activities.[10]

Put simply, the system works. The success of using the existing waiver process for limited, targeted fundraising demonstrates that changes to the system as it stands today are unnecessary. Stations are currently able to utilize existing flexibility to meet the needs of their communities in exceptional circumstances, while still maintaining the integrity of their core NCE programming mission.

---

[8] Ohio State Univ., 62 F.C.C.2d at 450.

[9] See, e.g. Media Bureau Announces Procedures for Obtaining Comm'n Approval for NCE Station Fundraising to Aid Japan Relief Efforts, 2011 WL 901330 (F.C.C. Mar. 16, 2011).

[10] See, e.g., Karsten Amlie, 10 FCC Rcd. 9763 (1995) (denying a waiver application because fundraising efforts in question lacked limitations of time and scope).

III. The Commission's Proposal May Negatively Impact Stations' Ability to Serve Their Communities

Removing the prohibition on third-party fundraising raises three serious operational and logistical concerns for NCE stations.

First, removing the ban on third-party fundraising may cause stations to be inundated with fundraising requests from local nonprofits. With local sources of philanthropic support becoming increasingly scarce as a result of the economic downturn, nonprofits in communities around the country are under incredible pressure to identify new donors. NPR Member stations already receive countless requests from area nonprofits to fundraise on their behalf. The current framework, which was designed to ensure that the public airwaves are to be used for the benefit of NCE stations and the audiences they serve, allows stations to decline these requests. However, a removal of the ban on third-party fundraising would open the floodgates to a greater volume of requests from local nonprofits, leading to potentially undesirable consequences. Indeed, the Report on the Information Needs of Communities ("INC") raises this very prospect, noting that removing the prohibition would put stations in the "awkward position of deciding which worthy cause to support and which to reject."[11] But what the INC report overlooks is that, for public radio stations, this "awkwardness" represents only the tip of the iceberg. Having to repeatedly decline requests could also jeopardize relationships between stations and potential programing partners, which are often local nonprofits. And the resulting competitive atmosphere among local nonprofits vying for airtime on the station could impact relationships between the nonprofits themselves.

Furthermore, the Commission's proposal would impose an increased administrative

[11] "The Information Needs of Communities: The Changing Media Landscape in a Broadband Age," by Steven Waldman and the Working Group on Information Needs of Communities at 356 (June 2011), *available at* www.fcc.gov/infoneedsreport.

burden on station staff by requiring them to develop and implement internal guidelines for dealing with requests for third-party fundraising. Most public radio stations generally operate under extremely tight budgetary and staff restraints. Already scarce resources should not be diverted from community service.

Second, although under the Commission's proposal, stations could arguably still decline fundraising requests from local nonprofits, it could subject local public radio stations to undue pressure from affiliated parties. Public radio stations have become media cornerstones in communities all across America—their mission is to serve the news and cultural programming needs of their communities. A relaxation of the current prohibition on third-party fundraising could tempt licensees to use the station to raise funds for their own discrete interests. NCE stations could face pressure to raise funds for a variety of projects or endeavors wholly apart from the core mission of the station. Especially in the case of a station licensed to a small non-profit organization, the station could be used to produce a financial windfall for the organization's officers and directors, and it would be difficult for the FCC to police such matters.

Finally, NCE stations' own fundraising models — based heavily on member donations—could also be jeopardized by the Commission's proposal. Public radio stations derive operational and capital funds from several sources, including significant support from local listeners in the form of membership dues. Although a subset of NCE stations receive operational or programming support from a variety of public and private sources, individual donations still constitute the single largest source of revenue for those stations, representing more than 34 percent of total public radio station revenue.[12] This reliance on individual donors, coupled with increasing pressure on other funding sources, including state and local governments, which have

[12]Corporation for Public Broadcasting, Public Broadcasting Revenue Fiscal Year 2010, *reprinted at* http://cpb.org/stations/reports/revenue/ (July 23, 2012).

sharply curtailed their contributions to public radio in recent years, have made the development and maintenance of a direct membership relationship with local listeners more important than ever. Members' relationships with their local stations are built upon a foundation of trust and shared mission. In addition to being associated with the success of a local community institution, members often receive special membership benefits, such as invitations to station events, premiums and access to program screenings, further highlighting their unique relationship with the station. Stations raise funds from members primarily through periodic pledge drives – often twice or more per year—which provide the lion's share of annual membership funds. Due to very real concerns regarding listener fatigue, stations are extremely careful to avoid excessive fundraising appeals and strive to strike an appropriate balance that meets the financial needs of the station as well as the needs of its listeners. Even a marginal increase in fundraising appeals as proposed by the Commission could have a significant negative impact on station membership.

Compounding this effect would be potential confusion among station membership. The intimate nature of this station-member relationship creates the reasonable expectation that donations will directly support the station's core mission of serving the community with noncommercial news, public affairs, music and cultural programming. Even the appearance of using listener contributions to fundraise for third-party nonprofits, no matter how well-disclosed, could further erode membership. Any decline in membership will ultimately lead to a loss of operating revenue, and consequently, overall degradation of station service.

Conclusion

The Commission's proposal, if implemented, is likely to upset the careful balance reflected in the current rules governing third-party fundraising by NCE stations. Those rules preserve the noncommercial nature of public radio programming and allow sufficient flexibility to stations seeking to fundraise for third parties in limited circumstances. Finally, relaxing the existing framework raises serious operational concerns on the part of NCE public radio stations.

Respectfully Submitted,

Joyce Slocum
Chief Administrative Officer and
General Counsel
Michael Riksen
Vice President, Policy & Representation
Michael Starling
Chief Technology Officer and
Executive Director, NPR Labs
Rishi Hingoraney
Director of Public Policy and Legislation
John Kean
Senior Technologist
Gregory A. Lewis
Deputy General Counsel

635 Massachusetts Avenue, N.W.
Washington, DC 20001
202/513-2040

July 23, 2012