

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Non-commercial Educational Station Fundraising)
for Third-Party Non-Profit Organizations) MB Docket No. 12-106
)
)
)
To: The Commission

COMMENTS OF THE MOODY BIBLE INSTITUTE OF CHICAGO

1. The Moody Bible Institute of Chicago¹ (hereafter “Moody”), by its undersigned counsel, hereby respectfully submits these comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*” or “*Notice*”)², in which the Commission solicits comments on whether and under what circumstances to allow non-commercial educational (“NCE”) broadcast stations to conduct on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations. The *Notice* requests comments on several specific questions posed therein. Moody will address these questions

¹ Moody is a non-profit, educational institution located in Chicago, Illinois. Moody has been recognized by the United States Department of the Treasury as tax exempt under Section 501(c)(3) of the Internal Revenue Code, and has been determined by the Commission to be legally qualified to operate broadcast stations on the channels in the portion of the FM band reserved exclusively for educational broadcasting. Moody is the Commission licensee of non-commercial educational broadcast stations operating on AM frequencies and both reserved-band NCE and non-reserved FM channels. It currently operates the following full power NCE stations:

WMBI(AM&FM) Chicago, Illinois	WCRF(FM) Cleveland, Ohio
WDLM(AM&FM) East Moline, Illinois	WSOR(AM) Naples, Florida
WMBW(FM) Chattanooga, Tennessee	WGNR(AM&FM), Anderson, Indiana
KMBI(AM&FM) Spokane, Washington	WRMB(FM) Boynton Beach, Florida
WMBV(FM) Dixon's Mills, Alabama	WGNB(FM) Zeeland, Michigan
WJSO(FM) Pikeville, Kentucky	WMKW(FM) Crossville, Tennessee
WVMS(FM) Sandusky, Ohio	WMBU(FM) Forest, Mississippi
WFCM-FM Murfreesboro, Tennessee	KSPL(FM) Kalispell, Montana
WVMN(FM) New Castle, Pennsylvania	WVME(FM) Meadville, Pennsylvania
KMLW(FM) Moses Lake, Washington	WKES(FM) Lakeland, Florida
WFCM(AM) Smyrna, Tennessee	WIWC(FM) Kokomo, Indiana
WHPL(FM) West Lafayette, Indiana	WRNF(FM) Selma, Alabama
WFOF(FM) Covington, Indiana	KMWY(FM) Jackson, Wyoming
WMKW(FM) Crossville, Tennessee	WMFT(FM) Tuscaloosa, Alabama
WKZM(FM) Sarasota, Florida	KMBN(FM) Las Cruces, New Mexico
WMBL(FM) Mitchell, Indiana	

² FCC 12-43, released April 26, 2012.

seriatim in its comments. However, Moody would note in summary that it is in the public interest to revise the Commission's rules restricting the ability of NCE stations to conduct fundraising on behalf of third-party non-profit organizations and to allow such fundraising under limited circumstances. It is clear, as has been amply shown by the past grant of waivers to allow NCE stations to conduct fundraising on behalf of third-party non-profit organizations, that NCE stations can conduct certain fundraising activities on behalf of other non-profit organizations without sacrificing their non-commercial nature and the valuable program service they provide to the public. To the contrary, fundraising in support of third-party organizations who actually implement the programs that are the subjects of educational programming broadcast by NCE stations are essential partners in the educational service NCE stations provide to the public.

I.

**IT HAS BEEN SAID THAT EDUCATION WITHOUT APPLICATION IS JUST
“ENTERTAINMENT”.**

2. The *Notice* asks whether allowing NCE stations to undertake fundraising for third-party organizations will compromise or otherwise limit the educational nature of such stations. Moody submits that addressing the problems, needs and interests of the local community through educational programming without the ability to assist organizations actively addressing those problems, needs and interests with needed fundraising makes little sense. Such a limitation arguably makes educational programming little more than entertainment programming. By allowing NCE stations to undertake fundraising for the groups and organizations actively engaged in implementing solutions to local, national and international problems, needs and interests, greatly enhances the public service these stations provide and expands the educational impact thereof.

3. For example, educating the public about the growing health problem of breast cancer in America is of great merit and clearly in the public interest. However, it is of somewhat illusory value if the organizations that provide screening and treatment for breast cancer lack the funding to operate. NCE stations have the unique ability to both educate the public through programming and assist in the implementation of the awareness, treatment, and cure of breast cancer if they are allowed to broadcast

fundraising programming for organizations implementing programs for the condition. Third-party fundraising clearly will enhance the educational nature of NCE stations.

II.

ONLY NCE STATIONS THAT DO NOT RECEIVE CPB FUNDING SHOULD BE ALLOWED TO BROADCAST THIRD-PARTY FUNDRAISING PROGRAMMING.

4. As discussed in the *Notice*, Moody believes the Commission should revise its rules to allow only NCE stations that are not CPB grantees, such as most religious broadcasters, to conduct fundraising for the benefit of third-party non-profit organizations. As noted in the *INC Report*, some public broadcasting officials do not want the flexibility to engage in fundraising activities for third-party non-profit organizations because “it would put them in the awkward position of deciding which worthy causes to support and which to reject.”³ Since CPB stations receive a significant amount of public taxpayer funding, it seems to Moody that they would be hard pressed to refuse to engage in fundraising for any group of taxpayers who wanted a CPB station to do so, thereby cluttering up their airwaves and significantly deteriorating the quality and amount of educational programming broadcast on their stations. Moreover, CPB funded stations must adhere to a rather strict and inflexible programming format that does not appear to allow for third-party fundraising programming, nor allow the flexibility in programming for meaningful third-party fundraising should that CPB policy be modified.⁴

III.

THIRD-PARTY BENEFICIARIES OF NCE FUNDRAISING SHOULD BE BONA FIDE NON-PROFIT ORGANIZATIONS, BUT NOT LIMITED STRICTLY TO NON-PROFIT ORGANIZATIONS THAT ARE TAX EXEMPT UNDER SECTION 501(C)(3) OF THE UNITED STATES TREASURY DEPARTMENT’S INTERNAL REVENUE CODE.

5. In order to exist and operate as a *bona fide* non-profit organization in any of the

³ See “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. (“*INC Report*”) at 317.

⁴ See Corporation for Public Broadcasting, FY2012 Radio Community Service Grant General Provisions & Eligibility Criteria at 7 (2012) (“*Radio CSG General Provisions & Eligibility Criteria*”), available at http://www.cpb.org/stations/grants/radio/generalprovisions/cpb_12RadioCSG_GeneralProvisions.pdf; Corporation for Public Broadcasting, FY2012 Television Community Service Grant General Provisions & Eligibility Criteria at 5 (2012) (“*Television CSG General Provisions & Eligibility Criteria*”), available at http://www.cpb.org/stations/grants/tv/generalprovisions/cpb_12TV_CSG_GeneralProvisions.pdf.

United States, you do not need to apply for, and receive, Section 501(c)(3) status under the Internal Revenue Code. Not all *bona fide* non-profit organizations choose to apply to be certified as tax exempt under Section 501(c)(3) of the Internal Revenue Code. There are a number of good reasons for this:

- Incorporation for tax-exemption status creates another level of complexity, responsibility, and regulation that a volunteer based organization may not be prepared to handle, such as the complexity of tax-exempt annual tax return filings to the IRS.
- Filing for incorporation and/or tax-exemption takes considerable time and money at the beginning and annually between paying lawyers, accountants and other professionals.
- Incorporation and meeting the requirements for federal tax-exemption limits certain lobbying and advocacy activities. 501(c)(3) organizations are subject to limits or absolute prohibitions in engaging in political activities. They are prohibited from conducting political campaign activities, and limited in proposing or supporting legislation.
- 501(c)(3) organizations are limited in the income they can receive from activities “unrelated” to their primary objective, which many see as an unnecessary limitation on their ability to raise funds for their non-profit purpose.
- Adding the obligations and responsibilities of 501(c)(3) status takes away from the focus on the non-profit work and can be a distraction.

Moreover, there are any number of *bona fide* non-profit, tax exempt organizations that are not qualified under Section 501(c)(3) of the Internal Revenue Code, but are covered under other sections of the Code. For example, Veterans Organizations are qualified under Section 501(c)(23). Civic Leagues and Social Welfare Organizations are found under Section 501(c)(4). Section 501 of the Internal Revenue code covers non-profit organizations in categories ranging from subsection (c)(3) to (c)(29).⁵ Limiting third-party fundraising for non-profit organizations who qualify only for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code unnecessarily limits the number of worthy, *bona fide* non-profit organizations that NCE stations could assist as part of their educational efforts.

6. Moody believes that NCE stations should be allowed to undertake third-party fundraising for any non-profit organization that has duly qualified as such in any state in the United States, or pursuant to the Internal Revenue Code under any section relating to non-profit organizations. Further, Moody submits that there should not be any additional limitations in the eligibility of those entities for which third-party fundraising may be undertaken other than that they are *bona fide* non-profit organizations existing pursuant to the statutes of one of the states in United States or the federal

⁵ The IRS Code also recognizes tax exempt organizations under Section 527.

government. Finally, the selection of such qualified non-profit organizations must be within the sole and unfettered discretion of the NCE station and should not be limited by their location...local, national and international *bona fide* non-profit organizations should be eligible for third-party fundraising on NCE stations.

IV.

NCE LICENSEES SHOULD HAVE THE DISCRETION TO DEVOTE UP TO 10% OF THEIR TOTAL AIR TIME TO THIRD-PARTY FUNDRAISING.

7. The Commission has proposed allowing NCE stations to devote up to 1% of their broadcast days to third-party fundraising. Moody believes and supports NCE stations having the discretion to devote up to 10% of their airtime to third-party fundraising and submits that doing so would not, "... divert these stations from their primary function of providing service to their communities of license through programming."⁶ Appropriate third-party fundraising programming, even that which uses up to 10% of airtime, will enhance the value of the educational efforts of NCE licensees in the provision of service to their local populations, as discussed previously.

V.

NCE LICENSEES SHOULD HAVE THE DISCRETION TO DECIDE WHETHER THEIR THIRD-PARTY FUNDRAISING PROGRAMMING SHOULD BE LOCALLY PRODUCED OR PRODUCED BY THE BENEFICIARY OF THE FUNDRAISING AND IN DECIDING WHETHER TO COLLECT AND DISTRIBUTE THE FUNDS OR ALLOW THE BENEFICIARY TO COLLECT AND DISTRIBUTE THE FUNDS.

8. In the *Notice*⁷, the Commission seeks comment on whether it should require that an NCE station itself conduct all third-party fundraising activities, including collecting funds and distributing the funds to the non-profit entity, rather than airing fundraising programs produced by the non-profit organization or some other entity on behalf of the non-profit organization. Specifically, the *Notice* asks whether requiring an NCE station to locally produce its third-party fundraising activities promote localism and whether there are potential benefits and costs of requiring NCE stations to locally produce third-party fundraising activities?

⁶ Notice at ¶ 11. In the alternative, the Commission should allow an amount between the proposed 1% and 10%.

⁷ Notice at ¶ 12

9. Moody submits that the Commission should allow its NCE licensees the discretion to decide whether its third-party fundraising is locally produced or produced by the beneficiary of the fundraising or some other entity on behalf of the non-profit organization. National and international non-profit organizations generally prefer to produce their own programming in order to ensure that it accurately portrays their identity and mission. Local non-profit organizations generally don't have the resources to produce their own programming and would need to rely on the NCE broadcaster in that regard. Leaving the production source up to the discretion of the NCE station is essential to the successful implementation of third-party fundraising.

10. Similarly, the methods of collection and distribution of the funds raised in connection with third-party fundraising should be left to the discretion of the NCE licensee and its third-party beneficiary. There is no reason for the Commission or anyone else to get involved in this process.

VI.
FULL DISCLOSURE OF THE BENEFICIARY OF THE THIRD-PARTY FUNDRAISING SHOULD BE REQUIRED, BUT THE CONTENT, LENGTH AND FREQUENCY OF THE DISCLOSURE ANNOUNCEMENTS SHOULD BE LEFT TO THE DISCRETION OF THE NCE LICENSEE.

11. Obviously, any third-party fundraising should include full disclosure of the beneficiary and any specific purpose for which funds are being raised in order to avoid any confusion on the part of the listening public as to whom is being benefitted from the programming. The information disclosed should be the name of the organization, its address, phone number, email address, web site address, if any, and a contact person for more information on the entity. If the funds are being raised for a specific purpose, that should be disclosed as well. However, other than that information, the additional content, length and frequency of broadcast of the disclosure announcements should be left to the discretion of the NCE licensee.

VII.
COMPLIANCE WITH THE RULES AND REGULATIONS IMPLEMENTED IN THIS PROCEEDING RELATING TO THIRD-PARTY FUNDRAISING SHOULD BE CONFIRMED THROUGH A CERTIFICATION IN THE CONTEXT OF THE LICENSE RENEWAL PROCESS.

12. In the *Notice*, the Commission indicates it is considering requiring NCE broadcasters

to disclose how they are utilizing fundraising time for third-party non-profit organizations “...so that the FCC can assess the effectiveness...” of the proposed change in policy.⁸ The *Notice* further asks comment on whether the Commission should require NCE stations to submit reports on third-party fundraising, including, for example, “...for each fundraiser, the date and time of the fundraiser, the name of the non-profit entity benefitted by the fundraiser and whether this entity is a local organization, the specific cause, if any, supported by the fundraiser, the type of fundraising activity, the duration of the fundraiser, and the total funds raised.”⁹

13. Moody is confused as to how requiring NCE licensees to report all of this information would allow the Commission to evaluate the “effectiveness” of the third-party fundraising policy change? What criteria would the Commission use to adjudge “effectiveness”? It seems to Moody that the ultimate judge of whether third-party fundraising is effective or not should be left up to the NCE licensee and its third-party beneficiaries, not the Commission. If the program is effective, the NCE licensee and its beneficiaries will utilize it. If not, the NCE licensee and its beneficiaries will discontinue the program. Requiring NCE licensees to submit paperwork to the Commission doesn’t seem to Moody to be a necessary and effective way for NCE licensee and the Commission to use their respective resources. Moody believes that any form of regular paperwork reporting would discourage smaller NCE licensees from participating in a third-party fundraising program due to the burden it would place on their resources.

14. Moody submits that the FCC Form 303-S Application For License Renewal should be modified to include a certification that the NCE licensee has complied with the requirements and limitations implemented in this proceeding for third-party fundraising. The form could be easily modified to ask whether the NCE licensee had engaged in third-party fundraising during the license terms, and if so, whether it had complied with the rules and policies governing such activity. In the event a NCE

⁸ *Notice* at ¶ 15

⁹ *Notice* at ¶ 15.

licensee fails to abide by those requirements and limitations, the license renewal process can be utilized by the Commission for the proper sanctions. Such a procedure would also obviate the need for NCE licensees to “opt in” and possibly later “opt out” of third-party fundraising since they would merely need to certify on their license renewal applications whether they had engaged in the program at any time during the license term.

VIII. SUMMARY

In summary, Moody submits that:

- Third-party fundraising for non-profit organizations will enhance the educational goals of NCE licensees without any deleterious impact on the programming they provide.
- CPB funded stations should not be allowed to participate in third-party fundraising.
- Any *bona fide* non-profit organization formed and existing under the non-profit laws of any state or the federal government should be eligible for participation in the third-party fundraising program, subject to the discretion of the NCE licensee in choosing the participants on its stations.
- NCE licensees should be allowed to devote up to 10% of their total air time to third-party fundraising.
- NCE licensees should have the discretion to decide whether their third-party fundraising programming is locally produced or produced by the beneficiary of the fundraising and in deciding whether to collect and distribute the funds or allow the beneficiary to do so.
- Full and accurate disclosure of the beneficiary of the third-party fundraising should be required, but the content, length and frequency of the disclosure announcements should be left to the discretion of the NCE licensee.
- There should be no reporting requirements to the Commission other than a certification at license renewal time that the NCE licensee has fully complied with the policies implemented herein for third-party fundraising in the event it chooses, in its sole discretion, to undertake such fundraising.

Respectfully submitted,

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