

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

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

**COMMENTS OF THE UNIVERSITY OF NORTH CAROLINA
CENTER FOR PUBLIC TELEVISION**

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July 23, 2012

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The University of North Carolina Center for Public Television (“UNC-TV”), by its attorneys, provides these comments in response to the *Notice of Proposed Rulemaking* in the above-referenced docket, MB Docket No. 12-106 (“*NPRM*”).¹ In the *NPRM*, the FCC requests comment on a proposal to relax restrictions on noncommercial educational station fundraising for third-party organizations.

I. INTRODUCTION AND BACKGROUND

UNC-TV was established by the University of North Carolina Board of Governors, pursuant to N.C. Gen. Stat. § 116-37.1, to provide distribution of noncommercial educational television programming through broadcast facilities licensed to the University of North Carolina. UNC-TV operates 12 full-power noncommercial educational television stations and some two dozen digital television translators that comprise North Carolina’s only statewide public television network.² As currently configured, UNC-TV’s over-the-air signals reach all of North

¹ *Noncommercial Educational Station Fundraising for Third-Party Organizations*, Notice of Proposed Rulemaking, 27 FCC Rcd 4515 (2012). The *NPRM* was published in the *Federal Register* on June 22, 2012.

² The University of North Carolina is the licensee of these stations and, by its statutory authority, has appointed UNC-TV to operate the stations.

Carolina's 100 counties, save three (Cherokee, Clay, and Graham) that are located in the far west of the state.

UNC-TV appreciates the opportunity to comment on the *NPRM*. UNC-TV recognizes the Commission's longstanding policy that has prohibited noncommercial educational ("NCE") stations from conducting fundraising for activities that substantially alter or suspend regular programming and that are designed to benefit any entity other than the NCE station itself.³ NCE stations, today more than ever, need to focus their fundraising efforts on their educational mission to remain viable. UNC-TV also acknowledges the value of the Commission's practice of granting waivers of this policy in extraordinary circumstances. UNC-TV has itself requested waivers in times of natural disasters such as the devastating tornados that tore through large parts of North Carolina in 2011.⁴

However, UNC-TV believes that one of the goals of its educational mission is to support and to be a responsible member in our local and statewide community and the nation and the world.⁵ Therefore, for the reasons discussed herein, UNC-TV generally supports the goals of the *NPRM* to relax restrictions on NCE stations engaging in fundraising activities for third parties in times of demonstrated need.

³ See generally *Commission Policy Regarding Noncommercial Educational Nature of Educational Broadcast Stations*, Memorandum Opinion and Order, 90 F.C.C. 2d 895 (1982).

⁴ UNC-TV was granted a Section 73.621(e) waiver for April 20, 2011, to permit fundraising activity for victims of unusual and severe storms in North Carolina. In the April 19, 2011, email from Commission Staff granting the waiver, the localized nature of the fundraising activity and "its significant impact on the communities served" by UNC-TV were expressly recognized.

⁵ Indeed, UNC-TV's authorizing statute contemplates broad service to its community. The law states that the function of UNC-TV's public statewide network shall include, among other things, activities "to enhance the uses of television for public purposes." N.C. Gen. Stat. § 116-37.1. Temporary use by UNC-TV of its stations to facilitate financial support in critical times of need would further this statutory objective.

II. UNC-TV SUPPORTS RELAXATION OF RESTRICTIONS ON FUNDRAISING FOR THIRD-PARTY ORGANIZATIONS BY NCE STATIONS

UNC-TV is the only television network in North Carolina with statewide reach. Therefore, UNC-TV believes it has a responsibility to provide whatever support and service it can to its viewers when circumstances demonstrate a significant need in the state. The Commission has historically recognized this principle through its practice of granting fundraising waivers to NCE stations who wish to provide fundraising support to communities in response to specific events. The very fact that the Commission has issued the *NPRM* acknowledges that a more streamlined and efficient process for accomplishing this laudable goal for the benefit of the public is desirable.

UNC-TV welcomes the lifting of these restrictions but agrees that this type of activity cannot and should not substantially interfere with its stated educational mission. Therefore, UNC-TV believes that the Commission should leave to individual NCE stations the decisions concerning whether or not a station participates in this activity at all, how much of its programming time will be allotted to this activity in specific situations and in the aggregate, and whether or not it merely produces and airs fundraising programs and activities or also collects and remits funds deriving from such programming and activities.

III. NCE STATIONS SHOULD HAVE FLEXIBILITY WITH REGARD TO LIMITATIONS ON FUNDRAISING ACTIVITIES

With respect to the proposed limitations and issues on which the *NPRM* seeks comment, UNC-TV offers the following for Commission consideration:

A. UNC-TV Urges Caution on Limiting Fundraising By NCE Stations to “Local” Non-Profit Organizations

With respect to localism interests, UNC-TV urges the Commission to carefully consider the nuances of the proposed limitation that NCE stations only be permitted to solicit donations

for “local” non-profit organizations.⁶ UNC-TV contends that this limitation could be unclear and overly restrictive because, at times, it may be unclear to an NCE station whether a particular organization is “local” (e.g., whether it is organized under the station’s state law or operates a local chapter) when it mobilizes to assist in a local community. For example, if the American Red Cross is involved in a fundraising campaign to assist a particular community or even a multi-county area in the wake of a disaster, it may not be clear whether the national organization of the American Red Cross is involved or whether some local or regional chapter is involved, and the NCE station may not have an effective way to make that determination with celerity and certainty. Moreover, even if a national organization does not have a “local” chapter, many national organizations offer critical services during times of need for individual, local communities, and a rule that would effectively prohibit an NCE station from engaging in fundraising activities for the local community with a national organization may have unintended consequences.

In this regard, UNC-TV asks the Commission to use caution about imposing limitations on NCE licensees to conduct fundraising activities for “local” non-profit organizations. Instead, UNC-TV contends that the emphasis should be on the local *benefit* rather than the home or headquarters of the organization. So long as the fundraising effort responds to a demonstrated need in the station’s community and would create a *local* benefit, the fundraising activity should be permitted. To be clear, UNC-TV does not mean to suggest that an NCE station should be permitted to engage in activities to stimulate general donations for a national non-profit; rather, UNC-TV posits that any new rule should not restrict the NCE station’s ability to engage in

⁶ See *NPRM*, ¶ 10.

fundraising activities for national organizations that may offer a specific, localized benefit to an NCE station's community during a demonstrated time of need.⁷

B. UNC-TV Does Not Object to Non-Burdensome Reporting and Disclosure Requirements That Do Not Exceed the Demands of the Current Waiver Process

UNC-TV does not object to a simple, non-burdensome, periodic process for reporting NCE station third-party fundraising activity to the Commission for the limited purpose of "fact finding." However, UNC-TV does not support any attempt to use such reports and information to restrict the individual station's exercise of discretion or to support a sanction for using that discretion in any particular manner. UNC-TV also believes that any proposed rules should be coordinated with the Corporation for Public Broadcasting ("CPB") to avoid or eliminate any inconsistencies with CPB's rules and policies concerning the Community Service Grant criteria and awards.

Significantly, however, the *NPRM*'s proposed categories of disclosure appear to extend *beyond* the reasonable showing required by the Commission's current practice in evaluating third-party fundraising waiver requests.⁸ UNC-TV objects to these burdensome categories. In

⁷ Even an emphasis on the local nature of the benefits of fundraising may go too far and have unintended consequences. The Commission has recognized that it is appropriate for NCE stations to engage in third-party fundraising for communities far distant from stations, for example for third parties providing relief support in Haiti. *See, e.g., Media Bureau Announces Procedures for Obtaining Commission Approval for NCE Station Fundraising to Aid Haiti Relief Efforts*, News Release (Jan. 13, 2010). UNC-TV is not suggesting that such efforts should be excluded by any new rules; UNC-TV is merely positing that *if* the Commission adopts rules that limit third-party fundraising based on aspects of localism, the Commission should be careful not to inadvertently exclude fundraising for non-local organizations when there will be local benefits.

⁸ *See NPRM*, ¶¶ 14-15. In support of third-party fundraising waiver requests, NCE stations have been required to submit information about the nature of the circumstances or need; the dates, times, and duration of the proposed fundraising activity; and the organizations that will benefit from the station's activity. *See, e.g., NPRM*, ¶¶ 5-6; *accord Media Bureau Announces Procedures for Obtaining Commission Approval for NCE Station Fundraising to Aid Haiti Relief*

the interest of a streamlined process to encourage the goals of serving an NCE station's community in times of need, UNC-TV urges that the reporting obligations should be *less* burdensome than a waiver application, and at least not exceed the demands of the current waiver process.

C. If the Commission Imposes a Percentage-Based Limit on Fundraising Activity, Any Such Limit Should Be Flexible to Account for Multicast Operations

The *NPRM* also seeks comment on a percentage-based limit on fundraising activity in relation to the amount of programming on the NCE station.⁹ If the Commission does impose such a limit—and UNC-TV is not urging that the Commission impose any such limit—UNC-TV urges the Commission to account for multicast operations, such as UNC-TV's primary and multicast streams,¹⁰ in determining the flexibility of the approach. UNC-TV urges that NCE stations with multicast operations be permitted the flexibility to aggregate total hours of programming and the discretion to determine how to allocate fundraising activity between and among streams or on a single program stream. For example, if the Commission were to adopt a limit of 2 percent of programming hours to third-party fundraising activities—and, again, UNC-TV does not favor such a limit—a station with three program streams would have the flexibility to determine whether it uses two percent on each program stream or whether it allocates the two percent from two of its streams to the third of the streams. UNC-TV contends that this flexibility and discretion will be important because NCE stations will know best how to target fundraising

Efforts, News Release (Jan. 13, 2010) (setting forth the same informational requirements for submitting third-party fundraising waiver requests).

⁹ See *NPRM*, ¶ 11.

¹⁰ UNC-TV currently offers a primary over-the-air program service, two free, over-the-air multicast program services, and one additional program service available to certain MVPD subscribers.

activity so it is most effective over multiple streams to achieve an optimal benefit without unduly impinging on the NCE station's principle mission.

CONCLUSION

UNC-TV commends the Commission for recognizing the importance of NCE stations' participation in the lives of their communities and endeavoring to expand their ability to support and serve their communities by engaging in third-party non-profit fundraising activities. For the reasons discussed herein, UNC-TV supports the Commission's proposal to remove certain restrictions on NCE stations engaging in fundraising activities for third parties in times of demonstrated need but urges caution in some respects.

Respectfully submitted,

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