

**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

**REPLY 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 Reply Comments in response to comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹

NPR's initial comments cautioned that the current prohibition on third-party fundraising represents a careful balance between the financial needs of local noncommercial stations and the desire to preserve unique and compelling content provided by noncommercial broadcasters. The Commission should be careful not to undermine this balance. We also noted that the current waiver system functions properly as is—it affords stations flexibility to fundraise for third-party nonprofits in exceptional circumstances, while ensuring that stations' noncommercial mission remains intact. NPR also raised serious concerns with the proposal's potential impact on 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"). Unless otherwise indicated, references to comments are to comments filed in response to the NPRM.

stations' operations and fundraising efforts. In particular, NPR was concerned about stations being inundated with requests from local nonprofits, facing pressure to fundraise for affiliated parties, and the proposal's impact on fundraising from individual listeners. In addition to clearly supporting these positions, the record raises further concerns regarding the potential for a significant alteration of the purpose and nature of NCE broadcasting itself. The Commission should work accordingly to ensure that the noncommercial nature of NCE broadcasting is appropriately preserved by maintaining the status quo.

I. The Record Demonstrates that the Commission's Proposal is Unnecessary.

The current system allowing for one-time waivers of limited duration meets the needs of public radio stations. Several commenters supported the underlying rationale for waivers only in limited circumstances and noted the absence of an administrative burden on stations in seeking and receiving this waiver, as well as the timely nature in which waivers are received.² Public radio stations have successfully sought and received waivers of the prohibition on third-party fundraising in the wake of natural and man-made disasters, including after Hurricanes Andrew and Katrina, the September 11, 2001 terrorist attacks and the Asian tsunami of 2004. These instances reflect the fact that the core mission of NCE stations is to provide educational and noncommercial programming, not to raise funds for third parties. Therefore, interruptions of regular programming for third-party fundraising should occur only in extremely limited

²See Comments of Station Resource Group at 1 (“Most SRG members have found the Commission's current approach to considering waivers of its general restriction on third party fund raising to be convenient, timely, and a minimal burden.”) Comments of University Station Alliance at 1 (“The current system of requesting and receiving an FCC waiver in emergency situations works because the FCC has proven to be responsive to requests for relief-fundraising usually as the result of “catastrophic” events. Also, existing venues of public service announcements (PSA’s) and news coverage address community needs.”).

circumstances where dire needs exist. The Commission should adhere to these underlying principles in the instant case.

II. The Record Reflects Considerable Concern that the Proposal Could Negatively Impact Station Operations and Fundraising.

Public radio station commenters noted that they were concerned about being inundated with requests from local nonprofits, which could jeopardize relationships with local nonprofit leaders and create an administrative burden on station staff.³ Several commenters shared NPR's concern regarding the potential for pressure from affiliated parties seeking to use station airtime for fundraising.⁴ Other commenters clearly articulated the potential negative impact of third-party fundraising on stations' ability to raise funds from local listeners by diverting precious airtime from core programming, reducing potential fundraising opportunities for the station itself, and by affecting perceptions of the station's editorial integrity.⁵ As such, the Commission has been presented with compelling evidence of the likely negative impact of its proposal on station operations.

³See Comments of Nevada Public Radio at 1; Comments of University Station Alliance at 1 (“By telling the community 88 hours of programming time is possibly up for grabs, entities desiring fundraising air-time could interpret FCC maximums for third-party fundraising as mandates.”).

⁴See Comments of New England Public Radio at 3-4; Comments of the University Station Alliance at 2.

⁵See Comments of New England Public Radio at 2-3 (Proposal could undermine public confidence in NCE stations' editorial independence); Comments of Nevada Public Radio at 1 (“With changing media habits, using on air time to interrupt programming for fundraising is something we approach with great care. Adding hours or days of fundraising (and by definition, reducing hours of news/information/music) will lesson our appeal to audiences with ever-increasing choices. With an average of 10% of our audience participating as givers, any reduction of their willingness to support us jeopardizes our public service capacity.”).

III. The Record Raises the Potential that the Commission’s Proposal Could Undermine the Noncommercial Nature of NCE Broadcasting.

In addition to the concerns originally raised in our initial comments, the comments of several other parties raise further serious concerns about the potential impact of the Commission’s proposal. In particular, if implemented, the proposal could go far beyond providing additional flexibility to NCE stations—it could fundamentally alter the nature of noncommercial broadcasting.

First, several commenters urge the Commission to allow fundraising not just for 501(c)(3) nonprofit institutions, but for a wide array of nonprofit organizations, including all those governed by subsection 501(c) of the Internal Revenue Code.⁶ This presents the very real possibility of noncommercial stations using airtime to raise funds for so-called “Super PACs” and political and advocacy-focused trade associations.⁷ An expansion of noncommercial broadcasting into fundraising for these sorts of organizations would constitute a significant departure from its intended mission of providing educational and noncommercial programming. It could fundamentally alter not only the nature of noncommercial broadcasting, but perhaps more importantly, the public perception of the service. This would significantly diminish, if not erase completely, the distinction between noncommercial and commercial broadcasting.

⁶See Comments of Moody Bible Institute of Chicago at 4-5 [hereinafter “Moody Bible Comments”] (“[T]here 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.”). See also Comments of Houston Christian Broadcasters, Inc., the Sister Sherry Lynn Foundations, Inc., the Hammock Educational and Environmental Services Association at 4-5 [hereinafter “Houston Christian Broadcasters Comments”].

⁷See Moody Bible Comments at 4.

Compounding these concerns are assertions from several commenters that stations should be able to use up to 10% or more of their annual broadcast airtime for third-party fundraising.⁸ If authorized, this would represent a significant portion of a station's annual program schedule—up to 880 hours per year—and would further erode the distinction between NCE stations and their commercial counterparts. Listeners and viewers could begin to view NCE stations as merely the fundraising arms of other community groups, instead of providers of unique and compelling noncommercial content as they were intended to be.

Still other commenters submit that there should be no requirement that the station itself conduct the fundraising activities in question.⁹ Allowing outside entities to independently produce fundraising appeals and handle the collection of funds could have the effect of further fueling the perception that the station lacks editorial independence and its airtime is being leased to the highest bidder. The station's programming could therefore be seen as “akin to regular advertising,”¹⁰ the avoidance of which was one of the primary rationales underlying the Commission's current prohibition on third-party fundraising. The cumulative effect of these proposals would be to erode trust in NCE broadcasting and therefore impede its noncommercial educational mission.

⁸See Houston Christian Broadcasters Comments at 5; Moody Bible Comments at 5; Comments of Good Life Broadcasting, Inc. at 5.See also Comments of Community Educational Television, Inc., Jacksonville Educators Broadcasting, Inc., and San Antonio Community Educational TV, Inc. at 6 (urging the Commission to allow unlimited third-party fundraising).

⁹See Comments of Columbia Bible College Broadcasting Company at 2; Comments of Cavalry Chapel of Costa Mesa, Inc. at 3-4.

¹⁰In 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).

Conclusion

For the foregoing reasons, NPR's urges the Commission to maintain the status quo to ensure that station operations and fundraising are not negatively impacted by third-party fundraising and that the noncommercial nature of NCE broadcasting is preserved.

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

August 21, 2012