

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

**REPLY COMMENTS OF  
PUBLIC COMMUNICATORS, INC. D/B/A FREE SPEECH TV**

Introduction and Summary

For the reasons set forth herein, Public Communicators, Inc., doing business as Free Speech TV, asks that the Commission allow a noncommercial educational broadcast licensee to carry third-party fund-raising for a public telecommunications entity (as defined under Section 397(12) of the Communications Act) when that entity supplies the licensee with a significant volume of programming.

About Public Communicators, Inc. and Free Speech TV

Public Communicators, Inc. (PCI) is a California non-profit corporation that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. PCI's principal project is Free Speech TV (FSTV), a 24-hour noncommercial television network that transmits news and

information programming.<sup>1</sup> PCI is a public telecommunications entity as defined under Section 397(12) of the Communications Act.

FSTV is carried full-time by DISH Network (channel 9415) and DirecTV (channel 348) as a public interest channel pursuant to the set-aside established by federal law.<sup>2</sup> FSTV reaches approximately 25 million households via these two DBS services combined. With minor exceptions, this DBS set-aside provides FSTV's only full-time signal carriage. In addition, FSTV programming is seen part-time on approximately 150 local public/educational/governmental (PEG) cable channels reaching a total of about 10 million further households.<sup>3</sup> Some PEG channels carry FSTV as little as a few hours per week, and others run FSTV programming for a significant part of the day.

Despite the fact that satellite and cable carriage gives our network substantial reach, most American television households cannot receive Free Speech TV. As well, given that one must subscribe to DBS or cable in order to receive Free Speech TV, there is no unpaid access to FSTV programming.

FSTV operates on a DBS public interest channel by statute that is reserved "exclusively for noncommercial programming of an educational or informational nature."<sup>4</sup> FSTV programming is nonpartisan and secular in nature. Axiomatically, FSTV carries no advertising. We believe that all FSTV program material, including interstitial announcements, complies with

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<sup>1</sup> <https://www.freespeech.org/tv-schedule/>. A short description of FSTV is contained in the recent FCC publication *The Information Needs of Communities*, p. 181.

<sup>2</sup> See 47 USC 335.

<sup>3</sup> For a listing of local PEG channels carrying portions of FSTV's programming, see <https://www.freespeech.org/affiliates>.

<sup>4</sup> See 47 USC 335(b)(1)(B).

Commission rules governing the noncommercial nature of content on noncommercial educational television stations.<sup>5</sup>

Like many noncommercial television stations, FSTV runs on-air pledge drives and obtains a significant part of its revenue from viewer donations. In most of its recent fiscal years, FSTV has obtained over \$1 million in contributions from annually from the public.

Unsurprisingly, Free Speech TV on-air fund-raising clearly and repeatedly identifies FSTV as the recipient of the viewer contributions; Free Speech TV's toll-free phone number, mailing address, and website are identified as places where viewers may donate.

#### Free Speech TV as a Possible Source of Programming for Public Television Stations

Given that FSTV cannot be viewed in most television households, it seems a natural "fit" that the network should seek to be carried on noncommercial educational TV stations. Such carriage is particularly feasible in the multi-cast era, when many noncommercial educational (NCE) stations broadcast multiple channels and there is a private agreement in place under which up to four such channels will be carried on local cable systems, as long as the content is not duplicative of other stations' programming. In addition to greater reach on cable, broadcast carriage would make FSTV available to those who cannot afford to subscribe to DBS or cable television service.

However, there are two principal obstacles to such arrangements.

First, FSTV obtains most of its programming pursuant to license agreements with producers. Currently, FSTV licenses DBS and cable rights, but not broadcast rights. We anticipate that it would be costly to clear public television rights for our current schedule.

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<sup>5</sup> Those requirements are set forth in Section 73.621 of the FCC rules.

Second, under current Commission policy, public TV stations would have to obtain a waiver in order to carry FSTV fund-raising, as the donations would go to a third-party organization.

The relevance of this situation to the above-captioned rulemaking is clear. We do not believe that it is practical for FSTV to make its programs available to NCE TV stations if those stations are barred from carrying its pledge drives, as that would entail increased expenses for programming and operations without a means to recoup them. On the other hand, if NCE TV stations were allowed to carry FSTV pledge drives rather than black them out, FSTV could obtain revenue from its viewers on those stations to defray added program costs. This change would open up both a unique program source for NCE TV stations and a major distribution opportunity for FSTV's noncommercial public interest programming.

We believe, however, that since most non-religious public TV stations receive support from the Corporation for Public Broadcasting, it would be necessary to distribute FSTV programs chiefly to stations that receive CPB support.

#### Replies to Comments in the Above-Captioned Proceeding

PCI is mindful that a number of important noncommercial broadcasting institutions support strict limits on third-party fund-raising over NCE stations. We believe that the reasons underlying their objections to third-party fund-raising would not apply to Free Speech TV---a prospective multi-cast channel offered by a public telecommunications entity that would be available to NCE television stations entirely at the option of the licensee.

National Public Radio, for example, argues that “[t]he distinctive program services offered by public radio stations are directly attributable to their insulation from commercial market forces... Removing the prohibition on third-party fund-raising today... 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 advertising.’”<sup>6</sup> PCI, however, is a noncommercial, non-profit public telecommunications entity that, like public broadcasting licensees, stands apart from the commercial marketplace. FSTV carries no advertising, and its programming is governed by requirements that are similar to those that apply to public broadcasting stations.

The Public Broadcasting Service and Association of Public Television Stations argue that CPB-qualified stations serve a unique public role that would be undermined by inclusion in the proposed third-party fundraising rules.<sup>7</sup> They cite Congress’s declaration that “it is in the public interest to encourage the development of programming that involves creative risks and that address the needs of unserved and underserved audiences, particularly children and minorities.” They go on to state that “public television stations thus have a mission to serve *all* segments of a community, specifically those that are less influential, rather than select third-party organizations.”<sup>8</sup> PCI does not believe that allowing NCE TV stations to carry its pledge drives would undermine those stations’ unique role, or limit their ability to serve underserved audiences. Rather, such a step would expand stations’ opportunities to match the needs of their communities with available noncommercial programming sources. Carrying FSTV fund drives would offset (perhaps entirely) the cost of such programming to local stations.

The University Station Alliance raises the fear that the allowing public stations to raise funds on-air for third party organizations without a waiver “would create a competition among not-for-profits to gain access to air-time...” and that stations “licensed to and operated by

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<sup>6</sup> Comments of National Public Radio, Inc., pp. 3-4.

<sup>7</sup> Comments of the Public Broadcasting Service and Association of Public Television Stations, p. 3.

<sup>8</sup> *Id.*, p. 5. Original emphasis.

universities, colleges, stage agencies, and school systems could be pressured to fundraise for internal licensee needs.”<sup>9</sup> The former concern appears to be directed principally to the local universe of non-profit organizations rather than the limited number of public telecommunications entities providing noncommercial educational programming. PCI is not proposing that FSTV raise funds for third-party charitable organizations in its role as a supplier of programming to noncommercial outlets. As to the latter concern, because FSTV is not organizationally related to any public TV licensees, we do not think our proposal triggers any issues. It may be that some public telecommunications entities are related to institutions which hold NCE licenses; if so, internal politics over licensees’ carriage of their programming will exist, regardless of fund-raising implications.

The Moody Bible Institute of Chicago (Moody) argues that only NCE stations that do not receive CPB funding should be allowed to broadcast third-party fundraising programming. Moody avers that since CPB-qualified stations receive a significant amount of taxpayer funding, it seems 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.”<sup>10</sup> PCI does not urge that the quantity of on-air fund-raising on multi-cast public TV channels be allowed to exceed the amount found on current local NCE channels.

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<sup>9</sup> Comments of the University Station Alliance, pp. 1-2. In contrast, the University of North Carolina Center for Public Television (UNC-TV) supports the relaxation of restrictions on fund-raising for third-party organizations by NCE stations. See comments of UNC-TV, p. 3.

<sup>10</sup> Moody comments, p. 3. National Religious Broadcasters (NRB) takes a similar position, though its reasoning is based upon Constitutional arguments that pertain to the exercise of religion rather than the effect on the program service of CPB-qualified stations. NRB comments, pp. 10-12. PCI does not believe that allowing CPB-qualified stations to carry third-party fund-raising for public telecommunications entities would impinge on religious liberty.

## Comment on Specific Regulatory Provisions

As described previously, PCI urges that the Commission allow third-party fund-raising on CPB-qualified NCE licensees, at least for the benefit of public telecommunications entities which supply the pertinent licensee with a significant volume of programming. We suggest that the Commission define “significant volume” as an average of at least six hours of programming daily.

With respect to the amount of third-party fund-raising programming allowed, we do not believe that 1% of airtime would be sufficient for the purposes we have described.<sup>11</sup> In PCI’s most recent fiscal year, FSTV devoted approximately eight weeks to fund-raising programming, although the solicitation of viewer donations takes up only a fraction of the airtime during such periods, since pledge drives consist primarily of regular or special programs. Assuming that solicitations for donations occupy about one-quarter of the airtime during a pledge drive, in its most recent fiscal year FSTV devoted about two weeks (4%) of its overall schedule to fund-raising. According to 2011 New York *Times* coverage, some NCE TV stations devote a full 10 weeks per year to fund-raising programming (which, based upon the same assumptions, would imply that they solicit donations about 5% of the time).<sup>12</sup> The *Times* adds that the average quantity of fund-raising on public TV stations has risen in recent years.

PCI supports the limitation on third-party fund-raising to entities which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code.<sup>13</sup>

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<sup>11</sup> See the Commission’s *Notice of Proposed Rulemaking* in MB Docket No. 12-16, at paragraph 11.

<sup>12</sup> See <http://www.nytimes.com/2011/03/14/business/media/14pledge.html>, March 14, 2011.

<sup>13</sup> See the Commission’s *Notice of Proposed Rulemaking* in MB Docket No. 12-16, at paragraph 10.

PCI agrees that the audience should be informed of the identity of the entity for which funds are being raised on-air.<sup>14</sup> As mentioned, in the case of FSTV pledge drives, we believe that the recipient is identified clearly.

Respectfully submitted,

PUBLIC COMMUNICATORS, INC. D/B/A FREE SPEECH TV

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<sup>14</sup> *Id.*, paragraph 14.