

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554**

In the Matter of)
)
Noncommercial Educational Station Fundraising)
For Third-Party Non-Profit Organizations) MB Docket # 12-106
)
)

To The Commission:

**Reply Comments of the National Lawyers Guild Committee on Democratic Communications and
Media Alliance**

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**A RELAXATION OF THE THIRD-PARTY FUNDRAISING RESTRICTIONS WOULD
ADVERSLY AFFECT THE NATURE OF THE NONCOMMERCIAL BROADCAST SERVICE**

The current restriction on non-commercial educational (“NCE”) broadcasters from fundraising for third parties when such fundraising alters or suspends regular programming should remain in place because the unique nature of NCEs would be adversely impacted. The current dual system of broadcast licenses, consisting of commercial and noncommercial stations is reflects the differences in the purpose, support, and operation of the two classes of stations.¹ Programming plays an integral role in defining the nature of a station as an NCE. Fundraising for third parties is not the purpose of NCEs; programming is. The alteration or suspension of programming for fundraising by third parties has a direct impact on and threatens the nature of NCE stations because it reduces the amount of airtime dedicated to educational, instructional, and cultural programming. In addition replacing programming with third party fundraising decreases audience support.

One of the primary objectives of the regulation of broadcasting is to serve the public interest. This interest is of such importance that the Communications Act of 1934 set aside a fixed percentage of spectrum space for non-profit radio programs because of the lack of general public interest programming contained in commercial broadcasting. Preserving the commercial/non-commercial distinction has been central to the F.C.C.’s reasoning surrounding radio broadcast regulation.² Broadcasting regulatory restrictions found in Title 47 U.S.C. Sections 303(a) and 303(b) of the

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Second Report and Order, 86 FCC2d 141, at ¶ 15 (1981).

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See *In the Matter of Commission Policy Concerning Nature of Noncommercial Educational Broadcast Stations*, 86 FCC2d 141 (1981).

Communications Act of 1934 allow the Commission to classify stations as commercial or noncommercial based in part on the nature of the programming permissible for each classification.³ This proposal would increase the amount of time NCEs may allocate for fundraising purposes, which inherently decreases the amount of time NCEs may allocate from their primary purpose of educational, instructional, and cultural programming.

Presently, NCEs are allowed to alter or suspend their programming for their own fundraising purposes within proscribed limits. In deciding against a set time limit for NCE fundraising that suspends programming, the Second Order and Report notes that “time devoted to fundraising... is limited by audience resistance, that is, it may be expected that, as fundraising increases, audience support will decrease.”⁴ The limits are in place to protect the noncommercial nature of NCEs. The proposed fundraising would be conducted in addition to the fundraising already expected of NCEs. If audience resistance already constrains how much fundraising a NCE may conduct for its own behalf, additional fundraising will further increase audience resistance and drive down audience support. The decrease in support would negatively impact the NCE as well as negate the potential benefit of fundraising for the NCE. A decrease in audience support will impact the nature and the funding of NCEs; therefore, this proposal should be denied.

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Section 303(b): prohibits noncommercial educational stations from broadcasting advertisements, and defines an advertisement as "any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended

(1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;

(2) to express the views of any person with respect to any matter of public importance or interest; or

(3) to support or oppose any candidate for public office.

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Id at ¶ 25.

RELAXING THIRD-PARTY FUNDRAISING RULES OPENS NCE STATIONS TO UNDUE AND UNNECESSARY PRESSURES AND INFLUENCES

While noting for the record that the existing waiver process has worked well when disasters like the Haitian earthquake caused heavy usage by NCE's wishing to assist victims on an emergency one-time basis, we see many areas for caution in the proposed rules' relaxation and many grounds to fear increased burdens and undue influence being brought to bear on the NCE broadcasting sector ; including administrative overload, uneasy relationships with major donors and underwriters and the specter of Astroturf not-for-profit groups.

The fact is that the majority of NCE stations, which range in size from tiny Low Power (LPFM) stations to multi million dollar public broadcasting operations, have in common a general lack of sufficient administrative staff, both in the CPB-funded and non-CPB-funded sectors of NCE broadcasting. This is simply the nature of the beast, as noncommercial broadcasting is not a lucrative enterprise. The proposed loosening of restrictions will result in a significant increase in reporting requirements as well as the need to provide due diligence regarding localism requirements as well as to sort through and assess what is likely to be many requests for fundraising assistance from the always-starved nonprofit charity sector.

NCE broadcasters, who to some extent or another, have philanthropic ties to their local communities, which can encompass not for profit underwriters, public service announcement users, individuals of means with ties to various local charities, and trusted sources used for news and public affairs commentaries, may have to sort through many requests for on-air fundraising support from organizations with whom they may have one or many of the above connections.

The ways in which these areas of influence can and might impact choices made about third-party fundraising is a source of concern and may well place NCE broadcasters in the middle of a variety of conflict of interest situations. Some of these pre-existing relationships may also present hurdles to local not-for-profits that are less influential within the station's financial environment and create an unequal playing field for local charities.

In addition, as the Federal Communications Commission knows well, not all not for profit charities are primarily funded by individuals and/or not for profit entities. The explosive growth of oft-named “AstroTurf” or corporate agenda groups operating as not for profit groups with little transparency about the sources of their funding, has been outlined in several publications. Such groups using vague and un-descriptive names, often engage in substantial outreach designed to garner public support for corporate-friendly agendas. It can be very difficult to ascertain their true nature by a rushed and superficial investigation of the website or a quick phone call and many have 501(c)3 status under the law. It would be unreasonable to expect understaffed NCE administrative staff to perform thorough investigations before approving routine third-party fundraising requests, but the consequences of NCE broadcasters becoming fundraising vehicles for corporate groups with special agendas is a significant threat to the basic function and mission of noncommercial broadcasting and could cause terrible scandals that will be a blow to the sector as a whole and damage the public's trust in the noncommercial broadcast sector.

THE COMMISSION'S PROPOSAL MAY NEGATIVELY IMPACT STATION'S ABILITY TO FUNDRAISE

The fine balance that stations have established between fundraising and programming time may be undermined by the proposal. Noncommercial stations are careful to limit the hours they devote to pledge drives each year, because this programming is generally unpopular with listeners. Increased time devoted to third-party fundraising rather than content programming could weaken membership interest and support. With increased appeals by third-party nonprofit organizations, stations run the risk that listeners will actually donate their limited funds to the third-party organizations rather than the station itself.

The administrative and public relations burdens the proposal will create is likely to weaken fundraising efforts. Stations will be inundated by fundraising requests. This will create administrative and public relations burdens in terms of simply managing the number of requests and deciding which organizations to accept and decline. If a station simply accepts all requests to avoid the public relations issues, significant airtime and listener attention will be taken away from stations' own fundraising efforts. If stations decide to pick and choose which requests to accept, stations run the risk of creating rifts between the station and these community organizations and the constituents they serve.

Further, listeners may be confused by the influx of fundraising spots on their local stations. For example, if the mission of the third party fundraiser is similar to that of the station, it may be unclear to listeners whether a fundraising appeal is for the station or the third-party. Or, a station that is licensed to a non-profit organization that operates programs separate from the station may be inclined to fundraise for these programs rather than the station itself. A confused listener, who is not confident their money will actually support the station, is less likely to invest in the station.

Individual donations constitute the single largest source of revenue for most NCE stations. Donations primarily come through pledge drives and membership dues. When members donate, they invest in the mission of their station. They build trust in this relationship. If there is the appearance that member donations are supporting airtime for fundraising spots – or directly flowing to the third party itself -- rather than the station programming that members seek to support, membership trust will be compromised, and members will probably be less likely to invest in the station.

The Commission also questions whether to limit the scope its proposal to allow only NCE stations that are not CPB qualified, (which would happen to include most religious broadcasters), to conduct fundraising for the benefit of third-party non-profit organizations.⁵

No such distinction should be made. We have explained above that the proposal will likely weaken noncommercial stations' ability to fundraise. We do not see any way to justify this distinction. These issues apply to both stations that are CPB-qualified and those that are not. In fact, the impact may be especially detrimental for non-CPB qualified stations. By definition, non-CPB qualified stations do not receive funding from the Corporation for Public Broadcasting, and therefore must rely more heavily on their own fundraising efforts. Given their reliance on individual donations, these stations should not be saddled with the additional management and public relations duties that will probably compromise the station's connection with its listeners and their own ability to fundraise.

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See In the Matter of Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations, Notice of Proposed Rulemaking, 27 FCC Red 4515, at ¶ 9 (rel. Apr. 26, 2012) (“NPRM”). *See also* Working Group on Information Needs of Communities, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, at 356 (June 2011), available at www.fcc.gov/infoneedsreport [hereinafter “INOC Report”] (*See INC Report* at 356. This limitation also would include other non-religious NCE stations that are ineligible for CPB grants, including campus stations managed and operated by and for students, stations licensed to political organizations, and stations that provide in-service training programming to licensee employees, clients, or representatives. *See also Radio CSG General Provisions & Eligibility Criteria* at 7; *Television CSG General Provisions & Eligibility Criteria* at 6.

MORE THIRD-PARTY FUNDRAISING INTRODUCES PROBLEMS WITH TRANSPARENCY TO LISTENERS AND DONORS

According to the Federal Register (“Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations,” (77FR37638)), “(t)he NPRM proposes to add or revise the following rule sections, which contain proposed information collection requirements: (e)(1), [47 CFR 73.503\(e\)\(2\)](#), [47 CFR 73.503\(e\)\(3\)](#), [47 CFR 73.621\(f\)\(1\)](#), [47 CFR 73.503\(f\)\(2\)](#), [47 CFR 73.621\(f\)\(3\)](#), [47 CFR 73.3527\(e\)\(14\)](#).”

Specifically reflecting on 47 CFR 73.3527, the past record reveals an internal requirement within this section under paragraph (e) to maintain (available to the public) a "(p)olitical file. Such records as are required by §73.1943 to be kept concerning broadcasts by candidates for public office. These records shall be retained for the period specified in §73.1943 (2 years)."

Additionally, as per the Federal Register (77 FR 37638), "(p)ursuant to proposed [47 CFR 73.3527\(e\)\(14\)](#), each noncommercial educational FM broadcast station and each noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must maintain a copy of its annual report describing fundraising activities in the public inspection file until final action has been taken on the next license renewal application."

Concerns with transparency are raised when examining the possibility of abuse by various groups, and when considering the administrative nature of non-commercial educational stations. The

administrative nature of non-commercial educational stations, or NCEs, is unique. Many people understand this to mean that community radio and television is supposed to be free of the influences of political and religious advertising that is prevalent in some other types of broadcasts. Understaffed, under-resourced NCEs in certain cases may end up with undue influences. This takes time and energy from qualified stations, that can be put under pressure by more powerful interests, and ultimately makes it harder for them to do broadcasts of general interest, which frustrates the purposes of community radio. To alter the existing regulations as has been proposed, and to make the regulation more flexible, would ultimately lessen the extent to which the public interest is served by the regulation of broadcasting by the Federal Communications Commission,

In this portion of the reply comment we speak to the comment of National Religious

Broadcasters :

[[<http://apps.fcc.gov/ecfs/document/view.jsessionid=v4XIQx2VzpTGchFZhtCHydLQ5XpWCcVfPhQLnk2m7ty2n7v36s1N!973241960!-856245186?id=7021989079>]], filed 7/06/2012 by Craig Parshall and posted 7/16/2012.

The National Religious Broadcasters essentially feel there should be no locality requirement . Existing locality requirements are important because they serve to inform the public. Indeed, if the “other worthy public causes” of which they speak were to be granted waivers by the Commission and given greater access to non-commercial educational stations, we would see a slew of many groups come forward to abuse this process. Many of these groups, including corporate entities, would have their own agendas that could even be utilized in a non-transparent manner to decrease the likelihood of license renewal of non-commercial educational stations, or increase the likelihood of station takeover. We oppose the National Religious Broadcasters proposal.

While this reply comment should be construed as opposed to a grant of further regulatory flexibility, it should be understood that if there is any regulatory change taken by the Commission, such change should ensure transparency by:

1. Requiring retention of donor lists, and requiring them for noncommercial educational television stations as well as other types of stations
2. Requiring that the political file, as part of any rule change, for any station type, be placed on the Commission's web site (and made searchable through ECFS) in addition to being physically present at the station
3. That any file or list requirement be required to be posted to the Commission's website and searchable through ECFS immediately, and not postponed until some later year as some have proposed.