

May 29, 2012

Federal Communications Commission
Washington, D.C. 20554
MB Docket No. 12-106

RE: Proposed Rulemaking on Noncommercial Educational Station Fundraising for
Third-Party Non-Profit Organizations

We are concerned citizens who live in the San Francisco Bay Area and have taken an interest in the Commission's proposed rulemaking on noncommercial educational (NCE) station fundraising as a result of our interest in the pending license transfer application for KUSF-FM 90.3 which is presently under review by the Media Bureau.

In response to the request for comment we respectfully submit that tailoring the Commission's longstanding policy against fundraising for third-party non-profits will widen loopholes which provide considerable opportunity for abuse and will create outcomes contrary to the broader goals of the Commission—namely to support broadcast localism and programming diversity.

Paragraph 10 of the Notice raises important questions and we share the Commission's concerns about what constitutes an eligible non-profit and how to protect local public interest. Paragraph 14 of the Notice correctly identifies the likelihood of confusion as to who the beneficiary of such (proposed) fundraising may be (if it is intended to support the station itself or another entity.) This, we feel, is an especially slippery slope. We appreciate the Commission raising these questions and openly soliciting input.

We find cause for concern in the proposed §73.503(e)(2) rules found in Appendix A and the risk of abuse/erosion when a NCE station enters into a Local Management (LMA) or Public Service Operating Agreement (PSOA) and is operated by a party other than the licensee. If such an operator is itself a non-profit, the proposed modification will allow said operator to fundraise for its own benefit on the licensee's frequency. This conflict-of-interest is likely to supersede the evaluation of the beneficiary based on its value to the local community. Relaxing the current rules would leave such a decision entirely in the hands of the self-interested interim operator.

The example of KUSF-FM 90.3 is illustrative. Currently, this NCE license is held by the University of San Francisco (USF) who have applied to transfer it to the following parties: Classical Public Radio Network (CPRN); Public Radio Capital (PRC) d.b.a. Classical SF; and University of Southern California (USC). Prompted in some part by a potential breach of third-party fundraising rules, on June 28, 2011, the Media Bureau addressed a *Letter of Inquiry* (1800B3-MFW) to USF and CPRN. The specific issues raised outline loopholes through which, given relaxed rules, an LMA/PSOA operator is likely to utilize such an opportunity for its own benefit—rather than in the broad local interest as the proposed modification intends.

The principals operating the PSOA in said transaction have a series of overlapping roles and designations which create a great deal of ambiguity. Brenda Barnes, president of USC Radio is also one of two managing directors at CPRN. Marc Hand is the second managing director of CPRN and also serves as managing director of PRC. Further confusion arises given CPRN is designated as a nonprofit/LLC hybrid -or- "limited-liability non-profit company." As the profits of a LLC are distributed to the LLC's *individual* owners, it is arguable whether this organizational type conforms to the the statutory definition of 47 U.S.C. § 397(8) as raised in Paragraph 10 of the Notice.

While designation issues and the line of demarkation between Barnes' role as president of USC Radio and managing director of CPRN is unclear—what is known is that CPRN and USC Radio/Classical KUSC do business from the same (off-campus) office at 1149 S. Hill St # 150, Los Angeles, CA 90015; are run by the same person; and according to the 2010-2011 KUSC Annual Report:

“Classical KUSC receives no funding from the University of Southern California. Classical KUSC is one of the largest and most listened to non-commercial classical music station in the country. Located in downtown Los Angeles, the station is a broadcast service of the University of Southern California at KUSC 91.5 FM in Los Angeles and Santa Clarita; KPSC 88.5 FM in Palm Springs; KDSC 91.1 FM in Thousand Oaks, KQSC 88.7 FM in Santa Barbara, and KESC 99.7 FM in Morro Bay/ San Luis Obispo.”

“USC’s classical public radio can be heard in 7 counties, from as far north as San Luis Obispo to as far south as the Mexican border.”



Additionally, CPRN/USC Radio/PRC have now acquired/applied to acquire:

- KUSF 90.3 FM San Francisco, CA (\$3.75 million)
- KNDL 89.9 FM Angwin, CA (\$2.8 million).
- KCNL 104.9 FM Sunnyvale, CA (\$7.5 million)
- K212AA Licensed Translator Los Gatos, CA (\$205,000)

Salaries and expenses at CPRN are known to the Commission as a result of the aforementioned Inquiry, are atypical for NCE stations, and include multiple executives earning in excess of \$200,000 annually.

Since no financial support is provided by USC the means to finance such transactions and to meet operating expenses comes directly through listener fundraising. Barnes explains in an interview with *Inside Radio* published April 02, 2012:

“The FCC has signaled that it could be a violation of noncommercial station rules if KDFC raises money on its main signal before it actually holds the license. USC Radio president Brenda Barnes tells Inside Radio without any solicitations they’ve received \$200,000 in contributions, which gives her hope. ‘We’re

not concerned—we know we're going to be a big success,' she says. KDFC has also been able to split apart its simulcast to air fund drives on its North Bay signals in Marin County, Eureka and the Napa-Sonoma region where a recent effort raised \$600,000."

It now falls upon the Commission to examine. As such, this example points to the high potential of increased burden upon the Commission to audit such matters should loopholes be included in the proposed rulemaking. Also, given the financial stakes, PSOA operators like CPRN/PRC are driven by their own business needs to avail themselves of every opportunity to increase revenue and, in this case, to support their stated goals to widen their network which already spans the entire coast of California.

In the USC *Daily Trojan*, Barnes further explains "*It's about recruiting, branding and expanding the Trojan Family.*" In Barnes' own dissertation she speaks to the model which needs to expand fundraising: "*25% of revenue in the next four to five years to come from outside Southern California.*"¹

Further issues arise when examining the methodology. In this example Bay Area listeners have been led to believe their donations goes directly to KDFC-FM, although they are actually diverted to the eight-station network—which includes a 10% share owned by PRC. As such, listeners are financing further acquisitions. USC's educational status serves to create a halo for these transactions and provide a means to meet FCC qualifications, but no direct relationship with the educational entity (or their students) exists in the traditional sense. Beyond this, USC—a 90% owner of CPRN—stands to profit from trading on its educational status beyond the intended purpose of providing a local public service to the local community surrounding their own campus.

This activity builds a market for NCE licenses that is not aligned with their intended use. USF received the 90.3 FM license for a nominal cost in 1973 to serve its students and the people of San Francisco. Carrying shared programming with a network of eight other non-local stations, controlled by various LLC interests, and based in Southern California—runs against this intent. Furthermore, commodifying NCE licenses puts traditional educational licensees under undue pressure to divest themselves of assets meant to serve local communities.

The arrangement between CPRN/USC Radio/PRC offers an example of why and how any loophole in third-party fundraising rulemaking provides broad avenues for abuse and supports further consolidation, which puts the information needs of local communities at great risk.

The proposed rulemaking may also serve as an incentive for NCE licensees to enter into longer-term PSOA/LMA agreements as a means to perform fundraising for the benefit of the interim operator. This may comply with the letter of the modified rule, but conflicts directly with the spirit and purpose.

By comparison, the waiver system has been successful and does not increase risk of lining the coffers of entities with byzantine sets of overlapping principals, myriad local d.b.a. pseudonyms, and amorphous hybrid non-profit/LLC business structures. Thoughtful rulemaking with local information needs to be held front and center is critically necessary. We strongly urge the Commission to take a long view in this regard.

For the above-outlined reasons, we believe the proposed rules are flawed and a.) should not be approved by the Commission -or- b.) should include an explicit prohibition against fundraising by a PSOA/LMA operator for its own benefit, or for the benefit of a related entity.

We have additional concerns about the proposed 501(c)(3) approach. This would sanction stations that are not serving the locality, which only partially originate local programming, and/or operate with main studio waivers—to funnel money to a parent organization. KUSF 90.3 FM is one example. Religious chains are another. Again, we urge the Commission to examine the public interest benefit and not create further opportunity for localism goals to be subverted.

Present rules allow for 30-second announcements. Waivers can be obtained for further interruption of regular programming. The Commission in its June 28, 2011 *Letter of Inquiry* to USF and CPRN appears to have recognized that systematic fundraising by the third-party entity is a clear violation of the rules. It must remain so.

1 digitallibrary.usc.edu/assetserver/controller/item/etd-Barnes.3329.pdf

A cautious approach with a narrow rules which preserve the safety valve of waivers for good cause have worked well in the past. It is our sense that the risk for making a change outweighs any benefit and stands to be burdensome on the Commission. As in the Wolf Trap Farm example described in Paragraph 5 of the Notice we recommend protecting the opportunity for stations to seek a waiver for good cause. We strongly recommend any permissible third-party fundraising should be limited to emergencies, natural disasters, fire, flood, earthquake, plague, etc,

However, should the Commission decide to expand permissible third-party fundraising, we ask that the Commission require that all such programming be for a *local*, non-interested, third-party beneficiary AND be produced locally.

The one percent guideline per annum is arbitrary and unworkable. That's about 15 minutes per day, which would totally distort the sound and character of a station. And suppose a station maxes out the one percent for eleven months, and what if, for example, the locality is hit by a hurricane in the twelfth month? A better rule would be to allow, for example, two per cent in each of two calendar months in any 12-month period, limited to the regional disaster type situation.

While these examples are specific and limited, each speaks to the potential for the broadly adverse outcomes this proposed modification presents. As such, we hope they will be fully explored and addressed in the on-going evaluation of this matter.

Thank you for your consideration.

Sincerely,

Loren Dobson, San Francisco, California; KUSF volunteer; pro se Petitioner BALED # 20110125ACE

Harry Duncan, San Francisco, California; KUSF volunteer

Ira Hankin, San Francisco, California; KUSF volunteer; Production Director Sports Byline USA; former Production Assistant KBLX, KIOI

Ted Hudacko, Richmond, California; Pro-se petitioner BALED-20110125ACE

Kenya Lewis, San Francisco, California; Save KUSF volunteer

Thomas Plageman, San Francisco, California; Save KUSF volunteer; Declarant BALED # 20110125ACE

Tracy Rosenberg, Oakland, California; Executive Director, Media Alliance; Declarant BALED # 20110125ACE