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Christian
Communicators
Impacting
the World



January 31, 2013

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations, MB Docket No. 12-106

Dear Ms. Dortch:

On January 30, 2013, Aaron Mercer of the National Religious Broadcasters (NRB) met with Elizabeth Andrion, Acting Chief Counsel and Senior Legal Advisor in the Office of Chairman Julius Genachowski, regarding the Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations proceeding (MB Docket No. 12-106).

Specifically, NRB inquired into the current status of the proceeding following the conclusion of the comment and reply-comment periods in the summer of 2012. NRB re-affirmed its support for the concept at the heart of this proceeding that on-air fundraising by NCE stations on behalf of non-profit groups will serve a vital public interest not only by facilitation of the charitable impulses of listeners and viewers, but also by aiding non-profit groups in meeting critical community needs.¹

NRB re-iterated its recommendation, in accordance with the *INC Report* issued by the related FCC working group, that any NCE station that does not receive Corporation for Public Broadcasting (“CPB”) grants may qualify to participate in a new rule permitting on-air fundraising for third-

¹ NRB has articulated its support in its Comments in this proceeding. See: Comments of National Religious Broadcasters in Support of a Rule Change Permitting On-Air Fundraising by Noncommercial Educational Stations for Third-Party Non-Profit Organizations, submitted on July 23, 2012 by Craig L. Parshall, NRB Senior Vice-President & General Counsel, (“NRB Comments”).

party non-profit organizations up to 1% of the station's annual on-air time. ² NRB also noted that the possibility that many religious NCE stations will therefore be participating because they do not partner with the CPB does not create any First Amendment problem. ³ NRB further highlighted its previous suggestion that the third-party non-profit groups helped by an NCE station under this new rule be recognized by the Internal Revenue Service as 501 (c) (3) organizations, a factor that would solidify confidence that such fundraising efforts on-air would indeed be serving the public interest. ⁴

Regarding what NCE stations may currently do in this area, they are prohibited from fundraising except for themselves unless they are provided a waiver by the Commission. NRB stated that the current practice of the Commission issuing waivers for mass catastrophes or exceptional incidents should be retained in addition to the proposed new rule. ⁵

NRB referenced its public comments and reply-comments filed with the Commission in this proceeding on July 23, 2012 and August 21, 2012 respectively that discuss in detail these and other points of interest raised in the Commission's Notice of Proposed Rulemaking. ⁶

² "We note in this question the Commission's reference to the concern, expressed by the *INC Report*, that public broadcasting officials may not want the option of using this proposed rule change, as it would place them in the 'awkward' position of choosing between multiple worthy causes. There is another obvious consideration: stations that are Corporation for Public Broadcasting (CPB) recipients are therefore grantees of public funding, which distinguishes them from all other NCE stations that are purely supported by private donations. We agree with the *INC Report* recommendation that only NCE stations that are *not* CPB grantees qualify to participate in this proposed rule change." NRB Comments, pages 9-10.

³ See: NRB Comments, pages 10-11 where NRB listed the substantial host of Supreme Court cases that make it clear that incidental benefits to, or inclusion of, religious groups in a government plan does not violate the Establishment Clause of the First Amendment; including the 2002 case of *Zelman v. Simon-Harris* where the Court approved a government plan where 82% of the applicants were religious institutions.

⁴ See: NRB Comments, pages 12-14.

⁵ See: NRB Comments, page 17.

⁶ See: NRB Comments, and National Religious Broadcasters' Reply to Comments of REC networks and New England Public Radio, submitted August 21, 2012, by Craig L. Parshall, NRB Senior Vice-President & General Counsel.

Pursuant to Section 1.1200, et seq., of the Commission's rules, a copy of this letter is being filed via ECFS with your office.

Respectfully submitted,

/s/ Aaron Mercer

Aaron Mercer
Vice President of Government Relations
National Religious Broadcasters

cc: Elizabeth Andrion