

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

)
)
)
) MB Docket No. 12-106
)
)
)
)
)
)
)

In the Matter of
Noncommercial Educational Station
Fundraising for Third Party Non-Profit
Organizations

TO: THE COMMISSION

**NATIONAL RELIGIOUS BROADCASTERS' REPLY TO COMMENTS OF
REC NETWORKS AND NEW ENGLAND PUBLIC RADIO**

Frank Wright, Ph.D.
President & CEO
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149

Craig L. Parshall, Esq.
Senior Vice President and General Counsel
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149

August 21, 2012

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY	3
I. Responding to REC Networks	3
II. Responding to New England Public Radio	6
III. Conclusion	9

NRB’S REPLY TO COMMENTS OF REC NETWORKS AND NEW ENGLAND PUBLIC RADIO

National Religious Broadcasters (“NRB”) has previously filed its Comment in strong support of this Notice of Proposed Rulemaking (“NPRM”) in which the Commission has proposed changes that would loosen the restrictions that currently prohibit, absent a waiver, the interruption of broadcast programming to conduct fundraising for third party non-profit organizations. 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 (“NRB Comment”). REC Networks and New England Public Radio have filed comments in opposition to this NPRM, and we address those here.

I. Responding to REC Networks

REC Networks (“REC”), which is self-described as operating an Internet radio station, argues that the proposed regulation will open the doors for organizations to use the programming time allotted by this rule-change to raise funds that directly benefit their parent organizations. Even if that is so, REC fails to demonstrate how that would be harmful to the public interest, or would defeat the purposes behind the noncommercial educational (NCE) classification. REC contends that the proposal “completely undermines the educational purpose and self-sustaining mechanisms that are current cornerstones of the NCE service.” Yet they have not shown how or why this would occur, and we can envision no scenario that would support their objection.

On the other hand, in our prior Comment, NRB supported a requirement that clear disclosures be made by the station indicating the identity of the organization for which the on-air fundraising efforts are being made. NRB Comment, page 25. This could also

include identifying whether the organization is a “parent organization” of the station. However, in the end, it has *not* been demonstrated why there should be any form of *presumption* that fundraising for a non-profit, 501 (c) (3) organization that has an affiliation with the station would somehow either conflict with the intent behind NCE licensing, or would betray the public interest.

In the end, however, it should be noted that NRB has indicated that “[w]e would not oppose the requirement that such stations, on a form proscribed by the FCC, report how they utilized their on-air fundraising time, and specifically disclosing: the date and times of each such program, [and] the identity of the non-profit group promoted ...” NRB Comment, page 25. That will enable the Commission to judge for itself which organizations are benefiting from on-air fundraising appeals. We are confident that REC’s concerns will prove to be unfounded.

REC also objects to granting NCE licensees the discretion to determine which 501 (c) (3) organizations should be the subject of on-air fundraising appeals. On the other hand, NRB has demonstrated how this kind of discretion is fully consistent with the past Commission policies on related issues involving the airing of announcements by NCE stations on behalf of third party non-profit groups, even when financial consideration is involved, and the record shows no history of abuse occurring as a result of those policies. NRB Comment, page 20.

REC’s underlying fear, apparently, is that this proposed rule-change would, inexplicably, “further violence ... against oppressed [minority] groups ...” Presumably REC predicts that certain NCE stations (“non-NPR” stations, they note) will support groups that will work havoc and violence. But in support of this bewildering, astounding

contention, REC presents no facts linking NCE stations to any acts of violence or threats of violence. The only thing mentioned by REC relating to this is the fact that certain groups have been identified by the Southern Poverty Law Center, a private advocacy group, as “hate” organizations, and REC fears they will support causes antithetical to REC’s views.

In a related vein, NRB had invited Mark Potok, the Director of the Southern Poverty Law Center’s “Intelligence Project,” to be a presenter at the NRB 2012 annual convention. During that convention, the signatory to this Reply had the opportunity to participate with Mr. Potok during NRB’s Public Policy Debate session at that convention, discussing the pros and cons of the use of “hate group” labels in American legal and public policy discourse. NRB believes that this kind of discussion and the open and free marketplace of ideas that it engenders is the best *greenhouse* in which to foster the growth of liberty and civic values. We see no value in projecting fearful, unsupported scenarios as a basis for impeding a worthy rule-change, like the one contained in this NPRM.

As a final note, it would appear that REC invites the Commission to take sides on certain controversial issues of public concern, and to do so by voting against this NPRM. It seems clear to us that this proceeding is not the proper venue for a debate on those issues. Even further, as the Supreme Court has noted, neither the government nor any arm of the government is authorized to determine or enforce an official *orthodoxy* in matters of politics, religion, or moral values.¹ The suggestion that the Commission should reinforce REC’s social or political views by declining to make a long-needed rule-change is misguided.

¹ *Bd. of Education v. Pico*, 457 U.S. 853 (1982).

II. Responding to New England Public Radio

New England Public Radio (“NEPR”) argues, in their opposition, that the current NCE scheme distinguishes NCE stations from commercial broadcasters, protects them from third party requests for air time, and contributes to maintaining the stations’ “focus on their designated function,” and that those considerations run counter to the change envisioned by this NPRM.

Yet, we do not see how allowing other non-profit organizations to appear during programming hours in order to raise funds for those *charities* would create the appearance that the NCE station is becoming more *commercial*. We believe that just the opposite would occur; the listening or viewing audience would be reminded that the NCE station is about the business of public interest, as evidenced by the *non-profit* status of the groups for which it raises funds.

We do not believe that NCE stations need or seek protection from requests for air time from third party non-profit groups as NEPR suggests. On the other hand, we have previously noted the concern from stations that are grantees of funds from the Corporation for Public Broadcasting (“CPB”) that they might have to make difficult choices between competing third party non-profit groups if this proposal is approved; and as a result, we join with the *INC Report* in recommending that this rule-change be limited to those NCE stations that are not recipients of CPB grants. NRB Comment, page 10.²

NEPR submits that listeners are already flooded with fundraising appeals, and that noncommercial broadcasting is a place where they can escape and focus squarely on

² We note that in the filing by the Public Broadcasting Service (“PBS”) and the Association of Public Television Stations (“APTS”) in this proceeding, they also make the same recommendation. Comments of the Public Broadcasting Service and the Association of Public Television Stations. We see little chance that the Commission will have difficulty distinguishing CPB grantees from other NCE stations, and that distinction can be stated explicitly in the Commission’s order.

mission-related programming; a change to this as proposed, they argue, will cause the public to view the “business” of NCE stations as charitable fundraising and not serving audience needs. Yet this argument ignores the fact that NRB’s suggestion is a one-percent limit on the annual airtime that can be devoted to special program fundraising for third party non-profit groups. Accordingly, ninety-nine percent of NCE programming time would therefore be *other than* raising funds for third party charities during programming hours. For the sake of argument, if the public were to perceive an excess preponderance of fundraising, a risk not empirically demonstrated here in any event, it would not be the result of this proposed rule-change; it would more likely be the result of NCE stations’ own fundraising efforts for themselves, an activity currently permitted for those stations, including NEPR, regardless of the outcome of this NPRM.

It is also argued by NEPR that the proposed regulation could weaken the public’s confidence in the editorial independence and balanced reporting of noncommercial stations and that if the public were to question whether news or interviews favor an entity for which the station is fundraising, then trust is broken. Yet this concern is unfounded, given the fact that current Commission rules permit an NCE station to accept short sponsorship and underwriting mentions on the air, not only from non-profit groups, but from commercial businesses as well. NEPR’s argument would seem to suggest, therefore, that all NCE stations, including public broadcasters like NEPR, should decline all sponsorship and underwriting opportunities. NCE stations are free to do that, of course, but the Commission’s current rules permit it, and there is no proof that those rules, which are not up for review in this proceeding, need changing, or that the public’s trust in the

news reporting functions of NCE stations have somehow been compromised by sponsorship or underwriting spots.

NEPR submits that with limited airtime and production resources, NCE stations will be forced to deny most requests, risking possible damage to community relations. But the best monitor of this hypothetical risk and of local community reaction is the NCE station itself. After all, it has the most to win or lose by miscalculating its use of the allotted one percent airtime for third party fundraising. Beyond that, charity organizations would be undoubtedly told, and would easily understand, the time limitations placed by the Commission rule-change. In a real-world scenario, it is doubtful that this would create anything close to a crisis of public relations; more likely, it would increase competition among non-profit groups to prove the worthiness of their charity to the NCE station, and we think that would create only positive results.

Lastly, NEPR suggests that there are better ways of “informing residents about problems in their communities,” such as through news reports and documentaries, further adding that the Commission would not, under this NPRM, exercise any quality control over the charities and community issues for which the fundraising would be held. Yet in fact, under the current rules, and with only few exceptions, the Commission does not control the programming content or subject matter of NCE stations as long as the station maintains its status as noncommercial educational, and continues to meet the public interest standards that are generally applicable.

Nevertheless, the primary purpose of this NPRM is not to provide third party charity-focused programming as an *alternative* to other news and information. While some news and information will obviously flow naturally as a result of fundraising

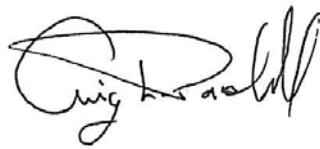
appeals, real-world experience indicates that the focus would undoubtedly be on the mission of the third party charity, and the human, societal and community needs that exist, and how those charities apply their resources to address those needs. This would merely supplement, and in no way would be a substitute for, the other news and information programming of NCE stations. Audience desires for regular news reporting and analysis and other useful information from an NCE station will continue to be reflected by the metric of their charitable support of the station through their giving; that will serve as an efficient incentive for the station not to neglect those needs.

III. Conclusion

For the foregoing reasons, and for the reasons previously stated in the NRB Comment in this proceeding, we urge the Commission to enact the rule-change contained in the NPRM with those additional qualifications set forth both in this Reply and in the NRB Comment previously filed.

Dated this 21st Day of August, 2012.

Respectfully submitted,



Frank Wright, Ph.D.
President & CEO
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149

Craig L. Parshall
Senior Vice President and General Counsel
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149
Counsel for National Religious Broadcasters