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In re: **Maricopa County Community College District**

Request for Experimental Authority To Relax Standards For Public Radio Underwriter Announcements

Dear Counsel:

We have before us the above-referenced March 18, 2013, "Request for Experimental Authority To Relax Standards For Public Radio Underwriter Announcements" ("Request") filed by Maricopa County Community College District ("Maricopa"). Maricopa is the licensee or joint licensee of two noncommercial educational ("NCE") stations,[1] and seeks temporary experimental authority to test a "loosening of the Commission's enhanced underwriting policies,"[2] or alternatively, a waiver of the Commission's underwriting Rules and policies.[3]

Background. In the Request, Maricopa requests that the Stations be allowed conduct a temporary three year experiment that would allow the Stations to enhance their underwriting announcements in the following ways: (1) provide "[f]actually accurate information concerning interest rates" available at local businesses, including underwriter banks, credit unions, automobile dealerships; (2) notify listeners of underwriter sales or special events; and (3) include qualitative adjectives in underwriting announcements, "particularly where the adjectives have a logogram quality that is factually based, such as 'certified,' 'accredited,' 'award-winning,' 'experienced,' or 'long-established,'" including publicly-determined rankings.[4] Maricopa explains the purpose of this demonstration is to "test the effects, if any, on listener satisfaction, program quality, and station revenue which might result from such a limited relaxation" of the Commission's underwriting requirements.[5]

[1] Maricopa is the licensee of KJZZ(FM), Phoenix, Arizona and joint licensee of KBAQ(FM), Phoenix, Arizona (the "Stations").

[2] Request at 2.

[3] Request at 3.

[4] Request at 2.

[5] *Id.*

Discussion. An applicant seeking waiver of a Rule has the burden to plead with particularity the facts and circumstances that warrant such action.[6] Thus, an applicant for waiver "faces a high hurdle even at the starting gate."[7] Although the Commission must consider carefully all waiver requests, such requests must be supported by a compelling showing in order to be granted.[8] Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.[9]

In creating an NCE service the Commission has sought to remove the programming decisions of public broadcasters from the "normal kinds of commercial market pressures under which broadcasters in the unreserved spectrum usually operate."[10] In order to maintain the essential character of the noncommercial service, Section 399B of the Communications Act of 1934, as amended,[11] Sections 73.503(d) and 73.621(e) of the Commission's Rules,[12] and the Commission's subsequent policies,[13] specifically proscribe the broadcast of announcements by public broadcast stations which promote the sale of goods and services of for-profit entities in return for consideration paid to the stations.

We will deny the Request for several reasons. First, as Maricopa recognizes, it does not meet the basic qualifications of an experimental authorization, as the waiver does not seek to "conduct technical experimentation directed toward improvement of the technical phases of operation and service. . . ."[14]

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[6] *See Columbia Communications Corp. v. FCC,* 832.F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

[7] *See WAIT Radio v. FCC,* 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) ("*WAIT Radio*") (finding that the Commission may decide in some instances that rule waiver serves the public interest if an applicant's proposal will not undermine the policy served by the rule). *See also Thomas Radio v. FCC,* 716 F.2d 921, 924 (D.C. Cir. 1983).

[8] *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

[9] See *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d at 1159.

[10] *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Second Report and Order, 86 FCC 2d 141, 142 (1981).

[11] 47 U.S.C. § 399B, which states, in relevant part, that "No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement."

[12] 47 C.F.R. §§ 73.503(d); 73.621(e), which state that "No *promotional* announcement *on behalf of for profit entities* shall be broadcast at any time in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals, or employees" (emphasis in original).

[13] *See Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Memorandum Opinion and Order, 97 FCC 2d 255 (1984); *Commission Policy Regarding the Noncommercial Nature of Educational Broadcast Stations*, Memorandum Opinion and Order, 90 FCC 2d 895 (1982); *Commission Policy Regarding the Noncommercial Nature of Educational Broadcast Stations*, Second Report and Order, 86 FCC 2d 141 (1981); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, First Report and Notice of Proposed Rulemaking, 69 FCC 2d 200 (1978).

[14] 47 C.F.R. § 5.203, which was codified as 47 C.F.R. § 73.1510 at the time of Maricopa's filing. We also deny Maricopa's request that we waive the technical requirements of this provision, finding that such a waiver would eviscerate the purpose of the Rule, unlike the waiver granted in *International Expo Information Broadcast,* 89 FCC 2d 1374 (1982). *See* Request at 2-3.

Second, we also deny Maricopa's alternative request that we waive Sections 73.503 and 73.621 of the Commission's Rules, and the Commission's underwriting policies.[15] Permitting Maricopa to enhance their underwriting announcements would undermine the statutory and regulatory purposes in authorizing NCE stations – that is, to encourage the development of a public broadcasting system that is free from extraneous influence and control. The manner in which the Commission currently permits donor and underwriter acknowledgements was established to balance the financial needs of public broadcasting stations and their obligation to provide a noncommercial service. We believe that the public interest is better served by requiring strict adherence to the underwriting Rules and policies.

Further, Maricopa's stated purposes for the waiver – to adopt measures to address the economic challenges due to decreased funding from federal and state sources and the prolonged economic recovery[16] - while laudatory, are not so unique and unusual in itself as to warrant a waiver of the underwriting Rules and policies. Many NCE licensees face similar circumstances and Maricopa fails to identify any special circumstances that distinguish it from all other NCE licensees. If Maricopa wishes to petition for a change in the rule, the appropriate vehicle would be a petition for rulemaking, not a waiver request.[17]

Accordingly, the March 18, 2013, "Request for Experimental Authority To Relax Standards For Public Radio Underwriter Announcements" filed by Maricopa County Community College District, IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

[15] 47 C.F.R. §§ 73.503; 73.621; Request at 3.

[16] Request at 8.

[17] In reaching the merits of Maricopa's waiver request, we do not prejudge the outcome of any future petition for rulemaking. Any such petition would be addressed separately, and subject to the outcome of any broader proceeding that the Commission may choose to undertake with respect to such a rulemaking petition.