

**FROM APPALACHIA TO OREGON:
HOW A FEDERAL COMMUNICATIONS COMMISSION ADMONISHMENT AGAINST
A NORTH CAROLINA RADIO STATION AFFECTS NONCOMMERCIAL RADIO
BROADCASTERS IN EUGENE, OREGON**

by
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A MASTER'S PROJECT
Presented to the Arts and Administration Program
of the University of Oregon
in partial fulfillment of the requirements
for the degree of
Master of Science

December, 2004

“From Appalachia to Oregon: How a Federal Communications Commission Admonishment Against a North Carolina Radio Station Affects Noncommercial Radio Broadcasters in Eugene, Oregon,” a project prepared by Richard E. Gould in partial fulfillment of the requirements for the Master of Science degree in the Arts and Administration Program. This project has been approved and accepted by:

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Date

Acknowledgements

I wish to express my utmost gratitude to Dr. Janice W. Rutherford for her guidance, support, and insights concerning the creation of this document. Her incredible patience with this project has made an arduous process significantly more positive and worthwhile. I also extend my sincerest appreciation to my partner, Linda Gould, for her support and contributions while editing this document and her assistance in typesetting this work into its final form.

ABSTRACT

In December 2001, The Federal Communications Commission admonished public radio station WNCW-FM of Spindale, North Carolina. The FCC's action, in part, addressed how the station both promoted and sponsored a for-profit musical event. In the aftermath of this decision, National Public Radio, along with two other organizations, filed an appeal with the commission. NPR et al. reasoned that "the decision interferes with stations' ability to partner with their local communities—to conduct film festivals, book fairs, speaker literary series and the like—unnecessarily discouraging stations from participating in events that have merit for the station and public benefit" (FCC DA 01-2831, p. 11). Although the FCC overturned parts of this decision, most of it is still intact. Clearly, this action has negative implications for partnerships between public radio stations and local arts organizations. This research examines the decision's impact upon alliances between public radio outlets and arts organizations in Eugene, Oregon. This study reviews pertinent literature and interprets information gleaned from an open-ended questionnaire sent to an Oregon public radio professional, and an in-depth interview with an officer of the National Federation of Community Broadcasters. While the results are far from conclusive, the subsequent document provides a critical perspective of the Spindale Decision's potential impact on partnerships between Eugene, Oregon, public radio stations and local arts enterprises.

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I

OVERVIEW OF PROJECT**Statement of Purpose**

The purpose of this study is to examine what impact, if any, a December 2001 Federal Communications Commission (FCC) admonishment will have on partnerships and business arrangements between local arts agencies and public radio stations in Eugene, Oregon. The admonishment, FCC DA 01-2831, addressed an action by radio station WNCW-FM of Spindale, North Carolina, which had sponsored and promoted a musical event put on by a for-profit concert promoter. While it is permissible under FCC guidelines for a nonprofit radio station to provide on-air promotions of transitory events, whether nonprofit or for-profit in nature, the FCC determined that since this event was sponsored in part by WNCW, any promotional announcements made by the station were in its own economic interests and therefore subject to admonishment. The FCC also ruled that since the promoter had given the station free admission tickets in exchange for the use of the station's logo and on-air promotional announcements, this arrangement constituted a quid pro quo agreement and the station was therefore in violation of the FCC's rules concerning consideration received.

In response to this decision, National Public Radio, along with the National Federation of Community Broadcasters and the Development Exchange— a nonprofit national organization that provides marketing and development services to educational broadcast licensees— filed a joint petition requesting the FCC to reconsider the Spindale decision. According to this document, “[T]he decision interferes with stations’ ability to partner in their local communities -- to conduct film festivals, book fairs, music festivals, speaker/literary series, and the like -- unnecessarily discouraging stations from participating in events that have merit for the station and public benefit” (FCC DA 01-2831, p. 11). The petition for reconsideration points out that the Spindale decision raises more questions than it answers concerning promotional activities. “As

a result, censoring station activities on the grounds of 'economic self-interest' threatens to create a chilling effect, inhibiting stations from using their broadcast facilities in ways that the Bureau [FCC] may perceive to have been improperly motivated" (p.11).

The FCC responded by stating that the petitioners for reconsideration had failed to demonstrate that their interests were adversely affected by the order and, therefore, most of the original admonishment still stands as FCC policy. However, the FCC did agree to delete paragraph nine of this decision, due to its treatment of hypothetical situations that had not actually transpired. This particular paragraph speculated that even if WNCW had not received tickets in exchange for on-air announcements, the announcements in conjunction with the station lending its name to the event appeared to support the station's self interest. The FCC further stated that WNCW "clearly anticipated increased membership and economic benefit ..." as the result of promoting a music festival that benefited a for-profit promoter (FCC DA 01-2831, p.3). Unfortunately, the deletion of this paragraph did little to clarify the difference between permissible and prohibited promotional activities in regard to arts events. As a result, local public radio stations' receptiveness toward partnering and promoting local arts events may be diminished.

Statement of Problem

For the past twenty years, both public radio and local arts organizations have faced a decline in government funding for their activities. Since the Reagan Administration, funding for the National Endowment for the Arts and for the Corporation for Public Broadcasting has been significantly affected. Current economic conditions and state taxpayer initiatives have further compounded the problem by reducing public moneys for the arts at state and local levels. In response, many arts advocates and scholars stress the importance of innovative affiliations, alliances, and partnerships to sustain the viability of arts organizations. However, due to the Spindale Decision,

public radio's willingness and potential to partner with arts organizations may have been significantly impeded. Either due to the admonishment itself, or through public radio stations' interpretation of the Spindale decision, it is possible that public radio's role in the promotion or advocacy of the arts may have been curtailed. This study will provide insight concerning how the Spindale decision has affected internal nonprofit radio policies and practices in selected Oregon markets.

Background

Public radio has often been an important means for local arts organizations to inform the public about their exhibits and events. Furthermore, public and community radio stations have often worked in partnership with local arts venues to both promote and produce joint efforts for the mutual benefits of themselves and their audiences. However, it may be the case that the Spindale decision has an undue negative effect upon these mutually beneficial arrangements. Due to the lack of precision in its wording, the decision may have created considerable negative impact on both nonprofit radio stations and local arts organizations.

Beyond the Spindale decision and other federal doctrines, public and community radio stations are also affected by state statutes, professional codes of ethics, and policies related to parent organizations such as the academic institutions with which they may be affiliated. By examining how this recent FCC action interacts with other levels of policy, a better understanding of its total impact will be attained.

Significance of Study

Economic difficulties are often a harsh reality faced by both arts organizations and public radio enterprises. Since the 1980s, funding for the National Endowment for the Arts, the National Endowment for the Humanities, and for the Corporation for Public Broadcasting has undergone increasing scrutiny and calls for decreases by

some elected or appointed federal officials. Just as federal funding for the arts and for broadcasting could become tenuous, state funding is in jeopardy as well. Currently, the state of Oregon faces a revenue crisis. This situation has and will continue to affect funding for the arts and for public broadcasting within the state. Therefore, it is becoming crucially important for many nonprofit arts organizations to explore and create alliances and partnerships to defray operating costs.

It also continues to be important for nonprofit arts organizations to be fully aware of all available avenues for sponsorships and how best to advance public awareness of their missions and works. As commercial radio stations become increasingly homogenized in their programming, public and community radio stations become more and more vital to publicize arts events and performances. However, as policy, the Spindale Decision could have a chilling effect on the ability of nonprofit radio enterprises to work with arts organizations. Furthermore, while the policy makers may have intended one outcome, interpretations of this decision by those under its jurisdiction may result in another and further inhibit alliances and interaction with arts organizations. Therefore, this study seeks to provide insight concerning the way a federal policy is both interpreted and acted upon by some specific organizations under its jurisdiction.

Hypothesis

Due to the Spindale Decision, Eugene, Oregon, public radio stations will be less apt to form creative alliances with arts organizations, in part because of the ambiguous wording of the FCC document.

Guiding Question

Since the Spindale Decision, have Oregon's major public radio stations been less open to working with local arts organizations on mutually beneficial activities that deviate from past practices?

Delimitations

- This study does not attempt to examine these issues at stations outside of Eugene, Oregon. Therefore, this study will not encompass national trends and tendencies.
- This study does not examine the practices of for-profit radio enterprises. Therefore, information in this document will not be pertinent to alliances between arts organizations and for-profit broadcasters.
- While this study does examine public television in relation to public broadcasting history, it does not address public television in its findings. Public TV's role in arts events is usually less intimate and immediate than is public radio's. Therefore, this document will not be an exhaustive review of public broadcasting practices.
- This study does not include public stations whose formats include only news and public affairs programming. It is doubtful that public news stations sponsor many arts events, and therefore, any information gathered from these enterprises would be of minor relevance to this study.
- This study does not include every radio station meeting the above criteria. As a qualitative analysis of current conditions, this study hopes to provide some insight into the current situation in Eugene, Oregon. However, this study is not meant to be a comprehensive survey of noncommercial radio practices in the Eugene area.

Definition of Terms

Admonish: To caution, advise, or warn against danger of an offense.

Affiliate: A broadcast station that airs network programming, but isn't owned by a network.

Amplitude Modulation (AM): A radio transmission in the 535-1705 kilohertz broadcast band.

Bandwidth: The Frequency range in a broadcast spectrum occupied by a signal.

Broadcast: The transmission of a signal over the spectrum to receiving devices such as radios or televisions.

Consideration: A benefit conferred upon a party by another party, to which the party receiving the benefit is not lawfully entitled.

Corporation for Public Broadcasting (CPB): Established by the 1967 Public Broadcasting Act, the CPB is a private and nonprofit organization designed to act as an intermediary between Congress and public broadcasters. CPB distributes Congressionally appropriated funds to public broadcasters and independent producers.

Federal Communications Commission (FCC): The FCC is the federal agency whose responsibility it is to regulate interstate and international communications. The regulated media communications entities include television, radio, telephone, and telegraph. The FCC also enforces broadcasting standards.

Frequency: The number of electromagnetic waves that pass a given point in a time period. Frequencies are measured in Hertz— a unit equaling one cycle per second.

Frequency Modulation (FM): Radio Transmission occupying a bandwidth between 88-108 megahertz.

Hertz: A unit of frequency equal to one cycle per second. One kilohertz equals one thousand cycles per second, and one megahertz equals one million cycles per second.

National Association of Educational Broadcasters (NAEB): Until it disbanded in 1981, the NAEB was public broadcasting's primary advocacy organization, professional forum, and distributor of programming.

National Federation of Community Broadcasters (NFCB): A national nonprofit organization that serves noncommercial community-based radio stations. The NFCB represents the views of its membership in federal policy arenas, such as FCC actions, Congressional hearings, and CPB policies.

Petition For Reconsideration: A written request submitted to the Federal Communications Commission for review of an action previously taken.

Report & Order: A Federal Communications Commission response following comments or petitions from interested parties. A Report & Order may amend FCC rules or it may reaffirm them.

Assumptions

It is assumed that public radio stations will be able to articulate their policies and will be willing to do so for the purpose of academic research. Another assumption is that most of the stations that will be contacted for this project are aware of the Spindale Decision. It is supposed that Eugene, Oregon, will have a sufficient number of public radio stations who are willing to impart information to the researcher, and that participating stations will have someone on-site who is aware of past practices in regard to station policies and behaviors. Furthermore, it is assumed that public and community radio stations find it mutually beneficial to collaborate, and that these collaborations are of benefit to the general public. Finally, it is assumed that this study will be useful for arts managers and public radio professionals and that further academic study can be built upon this research.

II

REVIEW OF RELATED LITERATURE

Purpose of the Review

This literature review examines perspectives regarding the purpose, perceived roles, legal obligations, and ethical responsibilities of public radio stations. A survey of the literature also provides insight into the history of FCC public radio policy, public radio, ethics in journalism, and standards and practices for governmental agencies. The review also explores current thought in building creative arts partnerships, and the decrease in federal backing for both the arts and public broadcasting during the past two decades.

Method and Sources for Review

This section includes a brief history of nonprofit public radio, the Public Broadcasting Act, FCC policies relating to broadcasting, and the evolution of FCC policy up to and including the Spindale Decision and its related documents. Sources include legal and scholarly interpretations of FCC documents and actions, current thought and criticism of public radio and government practices, and written works addressing historical developments in public broadcasting. This information comes from books, academic and professional journals, relevant websites, and recent news stories related to public radio issues. Academic search vehicles such as Proquest and Ebsco were utilized. Searches of Orbis and the University of Oregon Library system, Amazon.com, and other outlets were undertaken to find books and periodicals on the topic. Searches of topic-specific websites such as Current Online- NPR's website, and sites devoted to arts management topics identified information relevant to this study.

The FCC and Nonprofit Radio Broadcasters

In 1927, the Dill-White Radio Act created the Federal Radio Commission (Witherspoon & Kovitz, 2000, p.4). Originally intended to be in existence for merely a year, this agency's primary function was to "decide which stations got allocated which frequencies" (Douglas, 1999, p.62). While most of the frequency spectrum was devoted to commercial stations, noncommercial enterprises such as municipalities, churches, and schools also owned and operated broadcast outlets. However, the Radio Act of 1927 permitted commercial ownership of the airwaves to increase significantly, and hindered nonprofit licensees. As a result, almost half of radio's educational licensees disappeared by 1934. As commercial broadcasts grew in number, educational licensees were reassigned to less desirable radio frequencies. Educational stations also had to share broadcast time on these frequencies with local commercial stations. Requirements for high-cost equipment upgrades limited nonprofit broadcasters as well. Finally, the cost of trips to Washington, D.C., to litigate before the commission led many educational broadcasters to cease operations (Engelman, 1996, p. 24).

The Communications Act of 1934 established the Federal Communications Commission as the agency to regulate the airwaves and telephone, telegraph, and cable communications as well. In 1938, President Franklin D. Roosevelt "made the cross-ownership of radio stations by newspapers an issue of personal concern and closely supervised appointments to the FCC and the station licensing process" (Hilmes, 1997, pp. 218-219). However, Roosevelt's concern regarding monopolies in local news outlets did not translate into governmental support for educational broadcasters. In 1934, the FCC recommended against specific radio frequency allocations for noncommercial broadcasters. Instead, the commission asserted that it would promote cooperation between commercial and nonprofit radio entities. In 1938, noncommercial broadcasters were finally allocated reserved broadcast frequencies. However, these frequencies were part of an experimental bandwidth that would later become the

broadcast spectrum utilized by FM (Frequency Modulation) radio transmissions. Hence, these channels were of no interest to commercial broadcasters at that time (Engelman, 1996, p. 37).

In 1946, civil libertarian Lewis Hill, along with several associates, established the Pacifica Foundation with the goal of creating a listener supported nonprofit radio enterprise. Pacifica received the first post World War II noncommercial broadcast license not connected to an academic or religious institution. But the foundation's process to gain broadcast licensing was a daunting task. First, Hill and his associates suspected that the FCC might be reluctant to issue them a permit, since Pacifica's broadcasts could be propaganda with programming slanted toward one political ideology. In order to thwart this concern, Pacifica made it clear that one of its objectives was to air points of view not currently broadcast by commercial stations. Their broadcast application also stressed that Pacifica's programming sought to provide " 'an opportunity for ideas to gain currency in the presence of their opposing ideas' " (Engelman, p. 47). Initially, Pacifica applied to broadcast on the AM (Amplitude Modulation) frequency band since the FM spectrum was still in its infancy. In 1947, this initial application was turned down by the FCC since Pacifica's proposed Richmond, California-based broadcast frequency would partially overlap with NBC and CBS network broadcasts in the area. Ultimately, the Pacifica Foundation was granted an FM license in 1948 and began broadcasting from station KPFA in Berkeley, California (Engelman, pp. 48-9).

Hill initially envisioned that KPFA would acquire a portion of its startup financial resources through seed money gained from limited commercial announcements. His idea was that once financial stability was attained, the station would discontinue broadcasting commercial messages, and would become totally financed through listener support. That idea was abandoned when both the FCC and the Internal Revenue Service informed Pacifica that even limited commercial revenues could jeopardize the

station's nonprofit status. As a result, KPFA's broadcast application was once again submitted, this time "based exclusively on a listener subscription plan . . ." (Engelman, p. 49). By 1949, KPFA began broadcasting on an irregular basis with the goal of garnering enough listener support to finance regular and ongoing broadcast programming.

For ten years, KPFA was the only listener supported radio station in the United States. In 1959, The Pacifica Foundation launched KPFK-FM in Los Angeles. WBAI-FM in New York City became Pacifica's third radio station in 1960 after philanthropist Louis Schweitzer donated the broadcast facility. During this same period, Pacifica also applied for a broadcast license in an attempt to open a station in Washington, D.C. However, the "FCC sought to discourage the application by requesting voluminous supporting documentation" (Engelman, p. 54). The commission also challenged Pacifica's nonprofit status by asserting that listener subscriptions for station program guides possibly violated noncommercial licensing restrictions. Further communications from the FCC intimated that some of Pacifica's broadcasts bordered on obscenity. Among the offending works cited by the FCC was a 1963 discussion of homosexuality by a panel of gays broadcast on KPFK. After the broadcast, The New York Times called this program, "the most open and extensive consideration of the subject in the history of American broadcasting" (p. 55).

By 1963, all three Pacifica stations were operating under tenuous legal circumstances. The commission had declined to grant WBAI both a permanent license and permission to install a new transmitter. KPFK in Los Angeles still had not received a permanent license, and the renewal of KPFA's license was stalled. Nineteen sixty-three was also the year that Pacifica found itself under Congressional investigation for possible communist ties. As a result, the San Francisco Examiner predicted that the FCC would ultimately shut down all three Pacifica stations. Instead, the commission pressed for loyalty oaths from Pacifica's officers and for commission investigation into Pacifica's activities. The situation was partially resolved when Pacifica issued a

statement affirming its belief in the Constitution of the United States, but also asserting the principle of individuals' rights to their own beliefs. Jerome Shore, Pacifica's executive vice-president tendered his resignation. "Some saw Shore as a sacrificial lamb to the FCC. One month after his resignation, the FCC awarded Pacifica stations permanent licenses" (p. 56).

A Brief Political History of Public Broadcasting

While this study is focused upon public and community radio, noncommercial audio broadcasting has been far less studied than has public television. During the 1960s, as the concept of public broadcasting in the United States took hold, public radio was something of an afterthought. Therefore, no history of noncommercial broadcasting would be thorough or complete without reporting the developments in video broadcasting that led to this country's public broadcasting concept.

According to Engelman (1996), "the Ford Foundation and the Carnegie Corporation of New York wrote the book, chapter and verse, on noncommercial television in both its incarnation as educational TV prior to 1967 and as public TV thereafter" (p. 135). The two foundations dominated the discourse concerning public television and supplied the architectural framework for its creation. "Without the patronage of these two powerful private philanthropic institutions, a noncommercial television system would not have assumed its present form and might not have come into existence at all." In fact, the Ford Foundation had been advocating for educational television prior to there ever being such an enterprise. In the aftermath of World War II, it looked as if noncommercial broadcasters would refrain from seeking a reservation of television channels in contrast to their efforts a decade before in regards to radio frequencies. No educational broadcasters accepted the Federal Communications Commission's invitation to state a case for reserved frequencies prior to the commission's freeze on TV licenses in 1948. In fact, only a smattering of educational broadcasters expressed

an interest in television at all.

Not until National Association of Educational Broadcasters president, Richard Hull, inspired NAEB members to regard television as an important part of their mission was any significant interest engendered in the new broadcast medium. Within the short time available for educational broadcasters to meet the FCC deadlines, the Ford Foundation stepped forward to provide the necessary resources to mount the NAEB's advocacy efforts with the FCC. By 1951, the Ford Foundation had dedicated considerable resources to the cause of public television. First, the foundation charged one of its agencies with the task of "laying the political and institutional foundation for a noncommercial television system" (Engelman, p. 137).

Through Ford's Fund for Adult Education, groundwork was laid to "put together from scratch a rudimentary educational television system in the United States" (p. 137). The Ford Foundation was able to persuade the FCC to set aside channels for noncommercial television enterprises. By 1964, the Ford Foundation had become educational television's primary financial supporter and had moved its efforts from advocacy toward the development of national programming. It was announced that six million dollars in grant moneys would be available for programming on an annual basis. However, as the Ford Foundation delved further into programming issues, it became apparent that educational television's needs required more than foundation support. In the aftermath of this realization, funding issues became a primary focus for public broadcasting advocates.

The Carnegie Commission on Educational Television was established in 1965. Ralph Lowell, a longtime supporter of educational broadcasting, along with the National Association of Educational Broadcasters' C. Scott Fletcher, tendered the idea of a commission to John W. Gardner who was president of the Carnegie Corporation. The NAEB also proffered the concept to President Johnson and attained his backing. Gardner committed half a million dollars' worth of support from the Carnegie Corporation

and the commission was established. Commission members came from a broad spectrum of professions— business, politics, labor, the arts, and education. Through their work, the notion of public television came to be defined as “all that is of human interest and importance, which is not at the moment appropriate or available to support by advertising, and which is not arranged for by formal instruction” (Public Broadcasting Policybase, 1999). The Carnegie report made twelve distinct recommendations that “focused on two ideas: greatly enlarged federal support, and establishment of a Corporation for Public Television. Major operating functions—particularly programming and interconnection—were built on this core” (Witherspoon et al., 2000, pp. 14-15).

While noncommercial educational radio broadcasting had faced financial and political obstructions for decades, the Carnegie Commission’s report focused almost exclusively on the need for a publicly funded television system. In fact, “It was Lyndon Johnson—who himself owned a radio station in Austin and had other holdings in broadcasting—who added radio to the proposal, reportedly after heavy pressure from Jerrold Sandler, head of the National Association of Educational Broadcasters” (Douglas, p. 320). Pressure took one form in a 1966 conference of the National Education Radio division of the NAEB. The conference on “Educational Radio as a Public Resource” ended up commissioning a study “that would provide a basis for an appeal to Congress for radio’s inclusion in public broadcasting legislation” (Engleman, p. 86). Called *The Hidden Medium*, this study provided a clear and detailed portrait concerning educational radio’s lack of sufficient resources. *The Hidden Medium* was widely distributed three months after the Carnegie Report in 1967. This work provided the basis for the “Frantic lobbying and congressional testimony by NER [that] resulted in the inclusion of radio in the Public Broadcasting Act of 1967” (Engelman, p. 88).

The passage of the Public Broadcasting Act in 1967 established the Corporation for Public Broadcasting as the principal source of federal funds for public broadcasting. The corporation, a nonpolitical and nongovernmental entity, was designed by legislation

to insulate public broadcasters from undue political pressure. “The legislation required that the 15-member board of the CPB, appointed by the president with the concurrence of the Senate, be politically balanced, with no more than eight members from either [political] party” (Engelman, p.88). The CPB is not an agency of the executive branch. The President, with the approval of the Senate, appoints the members of the CPB’s bipartisan board of directors.

In order to further shield the CPB from political influences, the Act established a Congressional funding vehicle in which Congress votes on annual monetary allocations for the CPB two years in advance of the current cycle (Witherspoon et al. p. 83). While the CPB is public broadcasting’s main point of contact with the federal government, it is not the apex of the public broadcasting system. “Positioned between the rest of public broadcasting and the federal government, it is at once a link and an insulator. Its policy decisions are critical, but it must undertake its major responsibilities without engaging in system operations” (Witherspoon et al, p. 27). Furthermore, the Act bars the CPB from producing and distributing programs, and more critically, the CPB cannot own any broadcast stations.

Even with a hands-off policy, the CPB has had a significant impact on public radio since its inception. Once National Public Radio was conceived as a noncommercial and nongovernmental entity, the CPB enacted measures that created severe problems for the fledgling enterprise PBS- the national public television network, was not required to produce all the programming it aired. By contrast, National Public Radio was obligated to both produce and distribute national programming to its affiliates. To further complicate matters, public radio as a whole received less than ten percent of the public broadcasting budget. The rest was earmarked for televised productions. Another setback for public radio involved both potential station affiliates for NPR and funding for nonprofit broadcasters in general. When the CPB established guidelines for radio stations to become member stations, a full eighty percent of existing

noncommercial educational stations did not meet CPB requirements— that stations be on the air eighteen hours daily each day of the year and have a full-time staff of at least five professionals. Furthermore, stations needed to have an operating budget of at least \$80,000 and meet guidelines ensuring a minimum broadcast signal strength. FM stations were required to have signals of at least 3,000 watts, while AM stations needed a minimum of 250 watts to meet CPB funding guidelines. A mere seventy-three noncommercial stations met the CPB's requirements. However, by 1979, 220 stations were eligible for CPB funding (Douglas, 1999, p. 320).

In response to the dire condition of educational broadcasting in the 1960s, the CPB was established to change an array of “loosely allied educational television and radio broadcasters into an interconnected system of local noncommercial broadcast stations serving a variety of public needs” (White, 1994). In essence, through an arms-length policy design, the CPB “serves as a conduit for federal funds to the various not-for-profit radio and television stations around the country that provide noncommercial cultural and public affairs programming” (Mulcahy, 1992 p. 9).

However, even with this interconnectedness, the stations still form a loose network. The CPB owns no broadcast stations, nor does it produce any programming. The bulk of the responsibility for programmatic content falls upon the stations themselves, and may be redistributed to other stations via the Public Broadcasting Service for television, National Public Radio, or Public Radio International for radio broadcasters. However, unlike PBS, which merely serves as a distributor, NPR and PRI both produce and distribute programming. CPB funding is granted in ways intended to limit undue political influence. Because judgments would need to be made concerning program content and the locations of facilities, it was believed that a corporation would shield these decisions from the influences that might ensue were decisions made under the auspices of the executive branch. Federal contributions to public broadcasting via the CPB work on a matching grant formula. Unlike other Federal cultural organizations, the CPB has

no funding mechanism other than its government appropriation (FAQ about public broadcasting, n.d., internet).

While the proponents of public broadcasting intended that the new system be free from political interference, this has rarely been the case. When Richard Nixon was elected as U.S. president, he initially had political reasons for embracing the public broadcasting system. Nixon's chief communications policymaker, Clay T. Whitehead, felt that although the CPB was established during the Johnson Administration, it would be Nixon's team who would reap credit for the enterprise. However, the Nixon Administration embarked on an effort to minimize the Ford Foundation's dominant position in public television and, specifically, its relationship with National Educational Television, "then public TV's major national production center" (Witherspoon et al., p. 37). In a secret meeting with CPB's chairman, Frank Pace and its director, Albert Cole, Nixon aide Peter Flanigan indicated that the Administration would recommend a \$5 million increase in funding if new program production facilities were constructed to replace NET.

The 1967 Public Broadcasting Act called for de-emphasizing NET by building other productions facilities anyway. Therefore, Nixon's overture to the CPB had minor ramifications. But the situation was soon exacerbated by a controversial NET documentary called "Banks and the Poor." While the program received favorable reviews in the New York Times and the Wall Street Journal, its broadcast raised the ire of many federal officials. After focusing on financial institutions' discriminatory practices against low-income and minority patrons, the program ended with a long list of members of Congress who had, or were purported to have, ties with the banking industry. Democrats and Republicans alike were featured on this list. Some policymakers at PBS and CPB expressed misgivings concerning the fairness of the program's allegations. Others reacted with indignation once the Nixon Administration began applying political pressure. White House aide Peter Flanigan contacted CPB

Director Albert Cole and stated in no uncertain terms that a program of this nature was unsuitable for a government-sponsored enterprise. In a speech to the National Association of Educational Broadcasters, Whitehead, Nixon's head of the Office of Telecommunications Policy, attacked the Ford Foundation's presence in the public broadcasting system and laid out the Administration's objections to a centralized public broadcasting network. In a private memo written after his speech, Whitehead stated that:

No matter how firm our control of CPB management, public television will always attract liberal and far-left producers, writers, and commentators. We cannot get the Congress to reduce funds for public television, or to exclude CPB from public affairs programming. But we can reform the public broadcasting system to eliminate its worst features (Witherspoon et al., p. 42).

Nixon vetoed CPB's budget authorization in 1972. He cited the need for increased localism in public broadcasting and alleged that CPB was becoming a power center in public broadcasting rather than a grant-giving agency. In the aftermath, CPB President John Macy, Jr. resigned his position, as did his chief aides. CPB Chairperson Frank Pace was replaced with former Republican Congressman Thomas B. Curtis. By the time this political reorganization ended, "Nixon was able to appoint or reappoint 11 of the 15 members of the CPB board" (Engelman, p. 169).

While the Carter years were more favorable for public broadcasting, censorship pressures still remained part of the political landscape. One program produced by WGBH in Boston titled "Death of a Princess" dramatized the true story of the execution of a Saudi princess for having a love affair with a commoner. After the Saudi government applied pressure, acting Secretary of State Warren Christopher, "forwarded the protest of the Saudi government to Larry Grossman, head of PBS, along with a

cover letter implying that the program should be canceled” (Engelman, p. 174). Along with federal pressure, Mobil Oil, a major PBS underwriter, also sought to prevent rebroadcasts of the program. By the time all was said and done, Grossman ordered the program to be aired, but with time allocated at the end of the show for rebuttal. “Nonetheless, nineteen public television stations refused to carry the program, including KUHT/Houston, located in the heart of the oil industry” (Engelman, p. 174). During this period, several controversial documentaries about international affairs were shelved due to State Department objections, as well as those from other internationally focused agencies.

As part of Ronald Reagan’s efforts to streamline government, the CPB’s board was reduced from fifteen to ten members. While no more than six could be from either major political party, Reagan was just as adept as Nixon had been in his efforts to appoint highly partisan individuals. Among these individuals was a former senior editor from the conservative National Review, a former director of the United States Information Agency, and Sonia Landau who served as the head of Women for Reagan/Bush in 1984.

Changes in bylaws made key CPB officers even more accountable to the board. Reagan’s board members also became more heavily involved in programming decisions. In fact, Landau went so far as to completely ignore CPB’s guidelines while she advocated for more programming concerning history and for less emphasis on public affairs. Relations between Landau and CPB’s then president, Edward J. Pfister, came to a boil concerning her interference with a trip to Moscow that Pfister planned to take as part of CPB’s international affairs objectives. Although the junket had been approved by the State Department, Landau objected on the grounds that “ ‘an institution that operates on federal money is dealing with the Soviet government’ ” (p. 189). As a result, Pfister resigned in protest, stating that CPB’s independence had been compromised.

By the time Bill Clinton took office, House Speaker Newt Gingrich railed against NPR, portraying the radio service as government handout for upper middle class liberal “elitists” (Douglas, p. 320). Senator Bob Dole made his feelings toward public broadcasting known when he addressed the 1993 Public Radio Conference in Washington, D.C., and delivered a scathing criticism of the programming on the Pacifica Radio Network. After hearing speeches from three cabinet officials, radio conference members also heard from Clinton himself. The President told the audience that he and Hillary were “NPR” junkies who had listened to Morning Edition daily for the past decade. “He added that he thought so highly of NPR that he had asked its former president, Douglas Bennet, to join his staff as an assistant secretary of state” (Engelman, p. 278).

Critiques of FCC Policies and Actions

While U.S. Government Congressional and Executive arenas have affected public broadcasting policy through rhetoric, reorganization, and debates over CPB funding, the FCC has continued to have an impact on the broadcasting arena through its own actions. At times the FCC’s impact has had more to do with its choice of wording in its directives or its reluctance to fulfill its own mandates than it has with explicit enforcement of communications policy. Avery and Stavitsky (2003) undertook a discourse analysis in which they determined the values embedded in the rhetoric of both the Federal Communications Commission and that of the public broadcasting community. Documents for their study were obtained from the legal files of America’s Public Television Stations (APTS). Their analysis included thirty-nine separate FCC rule-making proceedings in which APTS represented the public broadcasting community between January 1990 and July 1999. These researchers examined data through “critical close reading, with decisions made about the overall relevance of documents as the reading progresses” (p.56).

While Avery and Stavitsky are still analyzing their evidence, they have been able to offer some preliminary findings. One major finding indicates that there is a radical disconnect between the values expressed through comments of the FCC and those of the public broadcasting community. “The FCC’s statements reveal values that are overwhelmingly tied to such market-oriented concepts as maximizing competition, enhancing market power, promoting investment incentives, insuring competitive rate structures, removing barriers to entry, and encouraging new service providers” (p. 57). Although FCC documents made several references to public interest, Avery and Stavitsky pointed out that these references are almost exclusively within a market-related context. Furthermore, it seems that the FCC “consistently privileges the concept of ‘consumer’ rather than the concept of ‘citizen’ ” (p.57). By contrast, the legal filings made on behalf of public broadcasting most often relied upon rhetoric used in the context of the public trusteeship model. Values such as diversity in programming, universal access, and the importance of educational and cultural services were asserted on behalf of the public broadcasters.

From this information, the researchers asserted that it could be easily argued that the core values that provide the basis for the creation of the public broadcasting system in the United States are completely absent from the FCC’s rhetoric contained in the documents under analysis. In addition, Avery and Stavitsky concluded that while the results do not seem surprising, they do “take on additional meaning when seen within the context of growing rigidity and apparent lack of interest on the part of FCC decision-makers” and in regard to Congressional reluctance to fund public broadcasting in the spirit of both the Carnegie study and that of the Public Broadcasting Act of 1967 (p. 58).

Not only does a clash of values exist between public broadcasters and the FCC, but in addition, Napoli (2001) argues that the FCC sometimes enforces communications policy in an ambiguous and inconsistent manner. Napoli asserts that for every policy both written and enacted, some clear criteria must be applied to its results.

Otherwise, he advises, political arguments can devolve to a capricious focus on a minimum of policy goals, thus dooming policy principles to interpretations based on ideological principles. Napoli cautions that, “This pitfall has been particularly acute in communications policymaking, where the central guiding principles have suffered from years of ambiguity, inconsistency, and manipulation” (p. 372). While concepts such as diversity, the public interest, and universal service have long been advocated in communications policymaking, Napoli observes that policymakers have never infused these words and phrases with specific meanings. As a result, the concepts remain ineffective if not meaningless as guides to either crafting or evaluating communications policy.

In order to illustrate his argument, Napoli focuses on the concept of localism within United States communications policy. Localism can be defined in a general way as broadcasters’ coverage of local issues, news, events; programming of locally-based content; and the forums for local citizens’ ideas and opinions. Napoli explains that the concept of localism in federal communications policy dates back to the 1790s, when Congress provided postal subsidies for newspapers. As a result, different postal rates were charged for these publications depending upon the distance each publication was mailed. This action on the part of Congress was designed to protect smaller local newspapers from competition by the larger metropolitan publications. As the country entered the radio age, this “prioritization of locally based information outlets became a prominent aspect of the regulation of the electronic media as well” (p. 374). From both the Radio Act of 1927 and the Communications Act of 1934, an ongoing policy tradition emerged that made it obligatory to fashion communications services oriented around local communities.

Unfortunately, “the primary problem in localism has been the long history of ambiguity and inconsistency as to what exactly constitutes local programming” (p. 376). Napoli points out that while in some instances localism has been interpreted to

mean the point of origin from which programming emanates, at other times a content-specific standard in which questions are raised concerning whether or not programming addresses local issues has applied. While these two concepts are often congruent, and while the FCC has often assumed a causal relationship between them, the “Commission has not been consistent in this assumption, and the empirical record is spotty at best” (p. 376). Napoli explains that the FCC has employed different operational definitions of localism throughout its history without ever offering any clear reasoning concerning why its interpretations of the underlying principles have changed. Therefore, due to these transient interpretations, incoherent and inconsistent policymaking occurs, and the evaluative criteria for these policies are continually shifting.

While Napoli addresses localism as it has applied to broadcasting in general, Stavitsky looks at how the changing concept has affected U.S. public radio. He too points out that ambiguity exists within this policy area, and that while the FCC sometimes asserts a spatial emphasis concerning localism, public radio stations often employ a social definition of the concept. This definition is concerned with listeners’ shared interests, tastes, and values rather than geographic parameters. Stavitsky asserts that both changing social conditions and industry developments within broadcasting have led to the spatial definition of localism becoming obsolete. He argues that with relaxed FCC rules allowing for more concentration of media ownership, the FCC has implicitly endorsed a social definition of localism. He cautions that, “it behooves the public broadcaster, as well as the policymaker and the academic, to understand the changing concept of localism. Public broadcasters face a conundrum operating in a system predicated on a regulatory philosophy of localism and being dependent on external support” (1994, p. 29). In other words, while a social definition of localism may be more in tune with current cultural conditions, public radio stations rely on local citizens’ contributions to sustain their efforts. Therefore, it is imperative to remain cognizant of local broadcasting needs, whether the FCC is consistent in their

application of this principle or not.

The localism principle is not the only communications policy to generate confusion among members of the broadcasting arena. Krueger and Corrigan (1991) found that “A recent audit by the Federal Communications Commission found US broadcaster’s compliance with one of several political broadcast regulations to be questionable” (p. 289). In light of that information, Krueger and Corrigan embarked upon a study that utilized both a mail survey and follow-up telephone interviews to general managers of all commercial broadcasting outlets in a northwestern state. Responses were received from eighty-three of one hundred thirty-eight stations in this region. Their findings revealed that while some FCC statutes concerning political broadcast regulations were easily understood by a majority of broadcasters, other regulations were more obtuse. In the study, evidence indicated that while broadcasters correctly understood sponsorship regulations, they often misinterpreted regulations pertaining to candidate access of the airwaves.

In addition, Krueger and Corrigan found that market size and station type “do not predict the accuracy of how broadcasters deal with the sponsorship or access regulations studied here. This debunks the notion that the large-market broadcaster, having additional resources, may be more skilled at handling the political broadcast requirements” (p. 302). This article asserts that the specificity of a statute significantly influences the statute’s usefulness in attaining policy goals. In conclusion, the authors state that the “FCC, as an overseer of the public interest, still retains the obligation to see that these regulations operate as intended” (p. 303). However, due to the confusion that broadcasters experienced in relation to the ambiguity of some regulations, they often sought clarification from the FCC. Krueger and Corrigan recommend the establishment of effective communications policy education programs for broadcasters and their attorneys.

While some governmental policies, whether ambiguous or not, are stringently enforced by the FCC, it appears that others are, for all intents and purposes, ignored. As part of

a plan to increase minority ownership of broadcasting enterprises, the FCC enacted two initiatives to facilitate this goal under the Carter Administration. One of these initiatives, known as the Distress Sale Policy, allowed broadcast station sales to minority buyers at significant discounts. The policy's partner initiative involved significant tax breaks for minorities seeking to attain broadcast enterprises. These policy initiatives were first implemented in 1979. In 1980, the FCC approved twenty-two broadcast station distress sales. (Stavitsky, 1992, pp. 249-252).

By 1991, however, James Winston, then the executive director of the National Association of Black-Owned Broadcasters, stated that he believed that the FCC had all but abandoned the distress sale policy. According to the FCC, while the policy remained in effect, "there have not been many opportunities for its implementation" (p. 253). Stavitsky asserts that while it has been argued that the FCC's independent status has transformed over time to a level of subservient dependency in its relationship with Congress, in the matter of the distress sale, ". . .the antipathy of the Reagan and Bush Administrations toward affirmative action as well as a belief in marketplace solutions" were the reasons for neglect of the distress sale by the FCC in the 1980s (p. 257). In conclusion, Stavitsky argues that, given the then current executive ideology, it would be highly unlikely that either the administration or the FCC would support extending minority preferences to new technology arenas. "Nonetheless, in recognition of the need for cultural diversity and equity, the political process that culminated with the distress sale and other minority preferences must be renewed" (p. 262).

WNCW-FM, Spindale, North Carolina

WNCW-FM went on the air for the first time in October, 1989, as a service of Isothermal Community College in Spindale, North Carolina. Since its beginning, WNCW broadcasted "an eclectic mix of music, news and public affairs programming. The flagship programs of National Public Radio, including All Things Considered and Morning Edition,

were complemented with local news and the aforementioned music mix that took pains to include regional artists” (Shannon, 2003, internet). As its reputation spread, WNCW experienced remarkable increases in both listeners and financial contributions.

In October, 2000, the WNCW Mountain Oasis Music Festival was held in nearby Henderson, North Carolina. However, the event was not actually organized or presented by the station. A.C. Entertainment, a for-profit event promoter, staged the music festival. In exchange for WNCW’s sponsorship, the promoter donated tickets to the station for use by station staff and as on-air giveaways. Prior to the event, a former station volunteer and nonprofit music promoter, Bill Bost, expressed his misgivings to station management concerning this arrangement. “At the core of Bost’s allegations was his belief that the resources of the nonprofit WNCW were being improperly utilized for the benefit of the for-profit festival” (Shannon, 2003, Internet). After station management assured Bost that they were operating within FCC regulations, WNCW proceeded with its sponsorship of the event.

Within days after the festival, Bost presented a sixteen-page complaint to Dr. Peter Lewis, president of Isothermal Community College. Along with issues concerning the music festival, Bost raised allegations of station mismanagement, a cover-up of a fuel spill at the station’s transmitter, discarded promotional premiums intended for donors, and a long list of personnel complaints. When the situation was not resolved to Bost’s satisfaction, he filed a complaint with the FCC, which, in turn, admonished WNCW for its actions in regards to the music festival. In the aftermath of Bost’s complaint, tensions grew between him and some WNCW staff members. Kim Clark, WNCW’s program director, filed a harassment complaint against Bost and his brother after they made dozens of telephone calls to the station during its April, 2002 on-air pledge drive. Clark alleged that the Bost brothers repeatedly told pledge volunteers that the volunteers were “ ‘dancing with the devil’ ” (Shannon, 2003). In addition, Clark stated that the brothers repeatedly pledged the amount of two cents, in order to symbolize the colloquialism of

offering one's two cents as an opinion. Since 2000, WCNW has either lost or terminated several of its staff members in connection with the tensions between the Bost brothers and the station. In 2003, the college's board considered selling Isothermal's license for WNCW to an outside interest.

Since Bost prevailed in his FCC complaint concerning the festival, the Spindale Decision has potential ramifications for the nonprofit radio community as a whole. Janssen (2002) points out that it is well known inside the broadcast industry that nonprofit stations cannot accept any kind of economic remuneration in exchange for promotion of events. However, the National Association of Community Broadcasters, along with NPR and the Development Exchange, assert that the FCC obscured existing rules by suggesting that some promotions could be illegal even in the absence of economic benefits to the broadcaster. Furthermore, the FCC ruling implies that host's giving away event tickets on air must avoid promotional language. Quoted in Janssen, Carol Pierson, NFCB president, added that, " 'Often, somebody from the festival or concert is on the show. If your language is restricted to underwriting language just by virtue of having received tickets, that's pretty tricky' " (Janssen, 2002, Internet).

It is clear that this FCC decision has created some confusion within the realm of nonprofit radio. While the FCC may have intended to preserve public broadcasting's noncommercial nature, it is apparent that complications exist. Although it may be in the public interest for noncommercial broadcasters to avoid explicit promotion of events in exchange for economic consideration, it could be inherently difficult for on-air personalities to maintain value-neutral rhetoric while artists connected with upcoming events speak enthusiastically about pending appearances. It may be best for station personnel to maintain some sense of objectivity in regards to upcoming cultural events, but limiting on-air personalities to a "just the facts" approach could potentially be a disservice to the public at large since reporting the potential social benefits of the performance could be constrained by value-neutral language.

III

METHOD

Description of Method

This critical analysis of ways the Spindale Decision may affect partnerships between Oregon public radio stations and local arts undertakings interprets data in light of information gained from relevant sources on noncommercial radio broadcasting. This study examines the Spindale decision's effects on current managerial attitudes toward partnering public and community radio with the arts. It demonstrates a need to evaluate the future potential for creative partnerships between public radio stations and arts organizations. It may be critical for both arts organizations and local public broadcasters to establish means by which to change current FCC policy. An e-mail questionnaire sent to a Eugene, Oregon, public radio station general manager and an in-depth telephone interview with the vice president of a national community radio broadcasting organization provide, in detail, the data for determining the implications of this FCC decision.

The interviews provided insight concerning how this decision has affected noncommercial broadcasters, how the national network and national professional organization view this policy, and how one of Eugene, Oregon's public broadcasters is conducting its affairs in light of this decision. This interview information shed light on various participants' interpretation of this policy, and how their perspectives differ from interpretations and practices of other research subjects. Responses were evaluated in light of their relevance toward interpreting the current state of public radio station policy and practices in Eugene, Oregon, insofar as they relate to partnerships with arts organizations and the Spindale Decision's potential impact upon these undertakings. While information gained from the participants provides insight concerning the ambiguity of this particular policy, this research undertaking is in no way comprehensive or conclusive in relation to noncommercial broadcasting as a whole.

Participants

Initially, two Eugene, Oregon, noncommercial radio stations were selected to participate in this study. Criteria for selection included the radio stations' previous presence at community performing arts events and the stations' broadcasting of popular music styles such as folk, jazz, blues, rock, or other forms of non-classical music. It was believed that if a station met both these criteria, it would be more likely that the Spindale Decision's impact would be an issue in relation to station practices and policies. While both stations agreed to take part in the project, only one returned the e-mail questionnaire. Repeated follow-up prompts to the other station were unsuccessful. Therefore, only Steve Barton, general manager of KLCC-FM provided responses representative of local radio stations for this study.

The researcher also contacted two professional organizations involved in noncommercial radio broadcasting. Both organizations were selected because of their involvement with the appeal of the original decision and because of the services that they provide the noncommercial radio community. These two organizations are not only intimately familiar with the decision, but they have also worked with radio stations in an advisory role in regard to the decision. Only one organization responded. Ginny Berson, vice president of the National Federation of Community Broadcasters provided the only responses representative of national organizations.

Therefore, the findings are circumscribed by this limited sample. However, the information received is worth reporting since it provides detailed evidence of the Spindale Decision's impact upon KLCC, the NFCB, and to some extent, NFCB member stations. Furthermore, additional information gained through these interviews sheds some light on the vagaries of other recent FCC decisions, and on how these vagaries often frustrate and bewilder noncommercial radio stations, their professional organizations, and the specific individuals involved in these undertakings.

IV.

DISCUSSION OF FINDINGS

Both Steve Barton of KLCC and Ginny Berson of the NFCB demonstrated a significant depth of knowledge regarding the Spindale Decision. When prompted to state their awareness of the FCC action, both participants provided detailed responses. Berson responded that, “The FCC is very concerned that noncommercial broadcasters do not carry advertisements and do not receive in any form what is known as ‘consideration’ in exchange for promoting the goods and services of for-profit companies” (G. Z. Berson, personal communication, October 22, 2004). Berson further stated that the FCC action was intended to provide some guidelines concerning how a nonprofit noncommercial radio station can participate in events with a for-profit organization, and how the stations can discuss these events on the air. A noncommercial station can sponsor an event with a for-profit enterprise, and the FCC would not be concerned unless it was discussed on the air. “If you never mentioned it on the air, the FCC wouldn’t be concerned” (G. Z. Berson, personal communication, October 22, 2004). Focusing on the specifics of the FCC action, Barton said that, “The Spindale Decision by the FCC was related to the promotion of a commercial concert by a noncommercial station. The promoter gave the station tickets to the event and the station identified the event as being associated with the station” (S. Barton, personal communication, May 24, 2004). He further stated that as a result of this business arrangement, the FCC admonished the station for a violation of the rules proscribing the advertisement of commercial goods by a noncommercial radio station.

Both respondents believed that many aspects of this FCC policy remained unclear. Barton stated that, “If anything, the decision makes the gray areas broader because it brought into play the concept that benefit to the station might be ‘consideration,’ even if nothing changes hands, directly or indirectly, between the promoter and the station” (S. Barton, personal communication, May 24, 2004). In other words, a station may be

benefiting economically simply by having its name associated with a for-profit enterprise. Therefore, it is unclear what does or does not constitute consideration in light of this ruling. Partially due to this decision, KLCC no longer welcomes events in partnership with commercial enterprises. “We are also more careful about how and when we accept tickets from commercial promoters” (S. Barton, personal communication, May 24, 2004). While the station does sometimes partner with commercial promoters, KLCC will not produce promotional spots for a for-profit event. Instead, all language used on-air is restricted to underwriting announcements (S. Barton, personal communication, May 24, 2004).

Berson also took issue with the wording of the decision. Citing her concerns about issues related to on-air giveaways of tickets and other merchandise provided by for-profit promoters, she stated that radio stations frequently undertake this sort of activity. She further explained that in the Spindale case, the FCC concluded that the tickets provided to the station were part of an organized promotional campaign by the promoter, and, therefore, were in effect part of an advertising initiative. However, ticket giveaways are standard practice in the radio industry. “The tickets are always given away as part of an organized promotional campaign” (G. Z. Berson, personal communication, October 22, 2004). Berson is concerned that underwriters face additional constraints that non-underwriting promoters would not have placed upon them:

You’re actually punished for being an underwriter in a certain sense. Because if you’re an underwriter, all the station can do with the tickets is to use underwriting language: “I have three pairs of tickets to see Willie Nelson tonight at Joe’s Bar & Grill. I’ll give them to callers number four, five, and six.” Now, if Joe’s Bar & Grill is not an underwriter, you can say much more. You can say “it’s going to be a great show,” “I hope to see you there,” “Willie Nelson,

this is a rare opportunity...” What the FCC is trying to do is to prevent stations from promoting the goods and services of underwriters, thus turning them into advertisers... So, it pays not to underwrite in a certain way. It’s really problematic (G. Z. Berson, personal communication, October 22, 2004).

On the surface, the Spindale Decision addressed partnerships between noncommercial stations and profit promoters. However, it may affect nonprofit events as well. This is due to the fact that the FCC may interpret the nonprofit concept differently from that of other regulatory organizations. While Barton stated that the decision has had little or no impact on KLCC’s relationship with nonprofit events, Berson cited some issues that have arisen for other broadcasters due to the decision. She cited a recent workshop put on by the NFCB during which two communications attorneys were part of a panel. The lawyers offered surprisingly different opinions. “One of them said that if anybody is making money [based upon attendance], for example, if an artist is getting paid based on the gate, then you have a problem” (G. Z. Berson, personal communication, October 22, 2004). In other words, since the artist would be receiving a percentage of gross ticket sales, the FCC could determine that the event is for-profit in nature. Furthermore, if for-profit food vendors operate concessions at the event, the FCC could find that the event doesn’t fall under the agency’s definition of nonprofit. Berson illustrated this point:

Let’s say KBOO [a Portland, Oregon, noncommercial radio station], in association with the Greater Portland Arts Council, sponsors a day-long festival of music and culture, and the artists are getting paid a flat fee, so that’s not really an issue, and the Greater Portland Arts Council is a nonprofit, but they have local restaurants set up booths to sell food– we don’t know the answer as to whether you can promote it or not. We just don’t know (G. Z. Berson,

personal communication, October 22, 2004).

Furthermore, if an artist connected with the event comes to the station for an on-air interview, FCC regulations requiring the use of value-neutral language still apply if the station is receiving some sort of consideration from the event, such as free tickets. In other words, even the artist is prohibited from promoting the event on the air and is therefore restricted to merely imparting factual information concerning the event. “The artist can come on and say ‘I’m doing it and this is when it is...’ but he can’t say ‘we want to see you there’ or ‘this is going to be a great show,’” Berson said. (G. Z. Berson, personal communication, October 22, 2004). As a precautionary measure, Berson advised that it would be prudent for radio station personnel to warn the artist in advance that the use of promotional language, for instance, stating that the event is a rare opportunity in order to stimulate potential interest in the event, is not permissible under FCC regulations.

Berson believes that Spindale is “a difficult decision and difficult to interpret.” Moreover, she observed that the FCC frequently formulates policies that are problematic in regards to lucidity. “Their indecency stuff is very unclear at this point and it has gotten much more unclear. They also talk about profanity as being unacceptable, without any definition of profanity.” Berson illustrated this point by citing the recent controversy regarding U-2 front man, Bono, at the Golden Globe awards and the FCC’s response to it:

It was okay to say “fucking” because it was used as a gerund and not describing sexual intercourse? Well, I’m sorry, but I think that’s ridiculous. To say that this word, which is like the word that is considered the worst word that you can use in broadcasting is okay because it’s an adjective? There’s no standard. I think it’s ridiculous that you can’t talk about sex on the air, but that’s

not the point.... [As a result of the vague guidelines] you wind up with a huge amount of self-censorship and a lot of important information doesn't get broadcast, and important arts programming doesn't get broadcast because people are afraid they're going to get whacked with a huge fine. (G. Z. Berson, personal communication, October 22, 2004).

Unfortunately, it appears that receiving clarification of FCC policies remains an arduous task at best. As illustrated earlier, attorneys who specialize in communications law sometimes disagree in their interpretations of federal policy. In addition, it appears that getting guidance from the FCC itself can be a frustrating process. Berson explained that a radio station could ask for a staff opinion from FCC. But a request for a staff opinion often provides little clarification. "You can ask for a staff opinion, but a staff opinion is only a staff opinion. It's not binding...[and] you can't always get a staff opinion [because] frequently the staff will say 'we have no opinion until the commissioners rule'" (G. Z. Berson, personal communication, October 22, 2004). In other words, if a station is fortunate enough to receive a staff opinion from the FCC, and the station follows the staff-provided guidelines, FCC commissioners could still rule against the station upon receipt of a complaint, since a staff opinion can be overturned by FCC commissioners. However, "the fact that you've gotten a staff opinion will mitigate any fine you might get" (G. Z. Berson, personal communication, October 22, 2004).

Berson has written several articles concerning the Spindale Decision for the NFCB's quarterly newsletter. She stated that in these articles her most consistent advice for NFCB members is to examine their relationships with events with three main criteria in mind: 1. The event is of a for-profit nature. 2. The radio station is receiving consideration from the event. 3. The station plans to use promotional language on the air when reporting the upcoming event. If a station meets all three criteria, then the

FCC could sanction the station. In other words, a station cannot receive consideration from a for-profit event and then promote it on the air. However, if one of these criteria is absent, then the relationship would fall inside of FCC guidelines. To illustrate, a station can promote a for-profit event if it doesn't receive any remuneration from it, or a station can promote a nonprofit event that has given the station tickets or other goods. Furthermore, a station can receive consideration from a for-profit event if the event isn't promoted on the air. However:

Of course it's never dear cut. If the artist is getting a percentage, then that could be considered for-profit, because the artist is for-profit. The gate matters to the artist, so then [the use of promotional language] is increasing the artist's take. So what I've been advising stations is basically of what my understandings of the rules are and I've written about it several times in the newsletters to try to clarify it (G. Z. Berson, personal communication, October 22, 2004).

In the broader perspective of FCC policies and decisions, Berson said that the Spindale Decision is, "... inconvenient, it's somewhat burdensome, [and] it's difficult to understand" (G. Z. Berson, personal communication, October 22, 2004). However, she was far more concerned with the FCC's rules concerning profanity and indecency. "That's a serious issue more so than this [The Spindale Decision] . . . [Spindale] proscribes the kind of speech that you can use to promote events on the air, which is not, to me, in the same category of seriousness as prohibiting a whole class of speech" (G. Z. Berson, personal communication, October 22, 2004).

V.

CONCLUSIONS AND SUGGESTIONS FOR FURTHER RESEARCH

While it is evident that the Spindale decision has had an impact on noncommercial radio broadcasting in Eugene, Oregon, it is still unclear as to the decision's full effect upon Eugene's nonprofit radio community. In part, this is due to the less than comprehensive response to the e-mail questionnaire, and also in part due to the confusion that surrounds this FCC action. Evidence from interviews for this project indicates that this FCC decision has brought further vagaries to federal policy guidelines, and as a result, has facilitated a greater degree of uncertainty within the nonprofit radio community concerning their compliance with federal regulations.

It appears that the Spindale Decision is but one of a number of policies that have confused broadcasting professionals. Furthermore, some evidence indicates that ambiguities are sometimes employed in the formulation of federal policy. As Napoli (2001) argues in his critique of the FCC's policies concerning localism, the guiding principles behind the formulation of federal policy are often neither adequately defined nor clearly articulated. Therefore, it seems that even the genesis of FCC policymaking can be fraught with vague concepts that are not clarified at any step of the policymaking process, even during the creation and adoption of regulatory guidelines.

It also appears that those values and concepts that are clearly articulated by the FCC often work at cross-purposes with the values and concepts articulated by public broadcasters. This lack of mutual understanding may further exacerbate the failure to clarify federal policies. Avery and Stavitsky (2003) offer some preliminary findings from their discourse analysis of written correspondence between the FCC and America's Public Television Stations (APTS). One of the major findings from their study was that correspondence from the FCC revealed values steeped in market-oriented concepts while correspondence from the APTS relied upon the model of public trusteeship.

Moreover, it seems that this clash of values has existed between federal regulators

and noncommercial broadcasters since the inception of their relationship. Even the Radio Act of 1927, which established the Federal Radio Commission, hindered nonprofit licensees while greatly expanding commercial ownership of the airwaves. By 1934, when the FCC was established, almost half of the radio's educational licensees had suspended operations. By the late 1930s, the FCC allocated reserved broadcast frequencies for noncommercial stations on the then unused FM frequency band. During the late 1940s, the FCC struggled with the concept of listener-supported noncommercial radio during the formation of the Pacifica Radio Network, and would exert political pressures on this broadcaster throughout the 1960s (Engelman, 1996).

Furthermore, there are FCC regulations that impact commercial and noncommercial broadcasters alike. Krueger and Corrigan (1991) concluded in their study of broadcasters' understandings of FCC regulations concerning political broadcasts that these policies were frequently misinterpreted and misunderstood. These researchers also debunked the notion that large-market broadcasters, having greater legal resources, were more adept at navigating FCC policy. Krueger and Corrigan also reported that broadcasters often sought staff opinions from the FCC concerning their interpretations of political broadcast policies. As a result, the researchers recommended the establishment of FCC policy education programs for broadcasters and their attorneys.

The need for policy education programs seems evident from several comments made during the interview with Ginny Berson, vice-president of the National Federation of Community Broadcasters (NFCB). Berson cited both the difference of opinions among communications attorneys and the frequent reluctance of the FCC staff to render opinions as further causes for policy confusion within the nonprofit radio community. Since avenues for policy clarification are often tenuous at best, broadcasters tend, at times, to engage in self-censorship, thus prohibiting themselves from undertaking activities that have significant public merit and might in actuality be perfectly legal (G. Z.

Berson, personal communication, October 22, 2004).

Another significant problem facing broadcasters is the frequent lack of consistency with which the FCC defines some of its policies. When examining the FCC's policies and decisions related to localism, Napoli (2001) found that over time, the FCC has employed several different operational definitions of the concept without ever offering any clear reason to illuminate why its definition has evolved or changed. FCC policies are also enforced to different degrees at various times in history. Stavitsky (1992) reported that the Distress Sale Policy, which allowed sales of broadcast stations to minority buyers at discounts with significant tax breaks, while stringently promulgated during its implementation in 1979, was all but forgotten by 1991. This change in enforcement was largely due to the changes in presidential administrations, and their outlooks on other minority-related legislation such as Affirmative Action.

Public broadcasting's history is fraught with examples of politics affecting operations. While the Public Broadcasting Act sought to insulate public radio and television from political pressures, quite often top-level policymakers have acted to censor or retaliate against the public service medium. This undue influence was apparent during President Nixon's reshuffling of the CPB board, the Carter Administration's attempt to cancel the airing of programs that it felt would inhibit US-Saudi relations, and the Reagan Administration's reduction in size of the CPB board (Engelman, 1996, Witherspoon et al., 2000).

It is within this context of frequent ambiguity, changing definitions, varied degrees of policy enforcement, political pressures, and less than adequate FCC policy clarification that the Spindale Decision resides. It is also apparent, through Spindale and other actions, that the FCC may employ a different definition of nonprofit status than that of other federal policymakers. Since questions have arisen concerning whether or not an arts event is truly nonprofit if artists are getting paid a percentage of ticket receipts; or if for-profit food vendors are operating concession stands, it is quite possible that a noncommercial

radio station promoting a nonprofit arts event could still be in violation of FCC policy if consideration changes hands. This scenario leads to additional questions that need clarification. For example, would the FCC deem an otherwise nonprofit event to be for-profit in nature if a commercial printer provided event programs for a nonprofit arts event and then split sales revenues from these programs with the arts organization? What if a for-profit company rented seats for the event? Clearly, any moneys gained by for-profit ventures dependent upon the gross attendance of nonprofit events could potentially jeopardize an event's nonprofit status under FCC scrutiny. However, the answer to this question may very well remain unclear until the FCC issues a ruling that clarifies their previous action.

While Berson of the NFCB believes that the Spindale Decision was of less significance than the FCC's stands and actions concerning profanity and indecency, and KLCC's Steve Barton stated that the ruling has had little or no impact on his station's relationships with nonprofit events, it is apparent that this FCC decision could have significant ramifications for nonprofit arts agencies. As ownership of commercial radio stations has become more concentrated and centralized, many cities are being offered radio programming that isn't originating from their locales. Commercial radio often consists of satellite feeds of narrow music formats and news commentary from national personalities to their erstwhile local stations. Many of these stations have no staffing on hand other than a station engineer to maintain the technical equipment and one or two additional personnel. In such cases, there are rarely any locally based news reporters or music hosts. This scenario makes it increasingly difficult for organizations of all kinds to generate any interest from commercial radio venues concerning their events and activities. It also makes it increasingly difficult for an organization to get a public service announcement on the air at these stations.

Centralized ownership of commercial radio stations has made public and community radio significantly more valuable to local arts venues. With this in mind, it is imperative for nonprofit arts agencies, arts advocates, and other interested parties to build alliances with

noncommercial radio interests, in order to push for policies and guidelines that would be of greater benefit to both noncommercial radio and the arts. The need for such alliances becomes increasingly clear when considering the frequently tenuous nature of funding for both the arts and non-commercial broadcasting. Well-known artists are often key to stimulating public interest in events, and these artists often work on a percentage of the gate basis. However, an effective means of putting the word out about upcoming events is just as vital for successful results. With these facts in mind, it is critical for professionals representing the arts and noncommercial broadcasting to build mutually beneficial alliances in order to influence the policymaking arena, and to push for improved means to clarify policy misunderstandings.

Finally, partially because of complications that arose when gathering data for this project, the sample size is admittedly too small to draw definitive and comprehensive conclusions concerning the Spindale Decision's complete impact upon noncommercial broadcasters in Eugene, Oregon. Therefore, further research should be undertaken to better assess the decision's effects upon this community's noncommercial stations. Moreover, since Eugene has but a handful of noncommercial stations, a study that focuses upon noncommercial radio throughout the entire State of Oregon would provide a richer source of data from which to formulate more detailed and thorough conclusions.

By focusing entirely on Eugene, Oregon, this study, by its very nature, ruled out data collection from some of Oregon's largest noncommercial stations. Additionally, data concerning the Spindale Decision should be gathered while seeking participants' views of the FCC's policymaking apparatus in general. It would also be prudent to gain a sense of each participating station's history of interaction with this federal regulatory agency, since past experiences and practices often affect present perceptions of current issues and actions. From a larger sample with a more comprehensive investigation into the history between participants and the FCC, and with a better assessment of participants' opinions toward the regulatory agency, more thorough and meaningful conclusions can be made.

APPENDIX A
INTERVIEW TRANSCRIPTS

Interview Transcript (e-mail)
Steve Barton
General Manager
KLCC-FM

May 16, 2004

Questions:

1). What is your understanding of the FCC's Spindale Decision?

The Spindale decision by the FCC was related to the promotion of a commercial concert by a noncommercial station. The promoter gave the station tickets to the event and the station identified the event as being associated with the station. The FCC admonished the station for violating the rules related to advertising for a commercial enterprise, stating that the tickets were consideration, and that in fact, the station associating itself with the event was benefiting the station and therefore violated the rules.

2). How has this decision impacted your policies and procedures?

In part because of this decision, KLCC no longer welcomes events for commercial enterprises. KLCC's 'welcome' includes promotional announcements about the artist and the event which associates KLCC with the event. We are also more careful about how and when we accept tickets from commercial promoters.

3). How do you feel that the decision impacts interactions with for-profit arts organizations?

Our relationship with for-profit arts organizations is more closely scrutinized and we are more careful in our announcing of these events.

4). How does the decision impact interaction with nonprofit performing arts events?

It has had little or no impact on our relationship with nonprofit performing arts events.

5). How has the decision impacted your willingness to sponsor performing arts events or to support *specific* functions during these events?

We need to clarify sponsorship in this case. Typically, sponsorship implies a financial stake in an event, putting up some of the money or indirect support and a share of profits or losses. We have typically not done this with anything that is not a 100% KLCC event. We do welcome an event where KLCC associates its name with an event and provides other deliverables like ticket giveaways, promotional announcements, and a trade of underwriting in exchange for specific deliverables from the promoter like KLCC's logo being associated with advertising of the event and a banner placement at the event. As I said above, we don't welcome events from commercial sponsors. We do partnerships with commercial promoters. In this case, the terms are much like 'welcomes' except we don't produce promos for the show and instead do underwriting announcements in exchange for the promoters' deliverables.

6). Have you discussed this decision with other radio professionals? If so, what are their concerns?

Not really.

7). Do you feel that this decision prohibits practices that were once allowable under FCC policy? if so, to what degree?

I think it moved the line a bit between what is permissible and what's not, but I don't think it was really a significant change.

8). How clear and precise is this FCC decision in your opinion?

It doesn't seem clear and precise at all. If anything, I think the decision makes the gray areas broader because it brought into play the concept that benefit to the station might be 'consideration' even if nothing changes hands directly or indirectly between the promoter and the station.

9). Do you have any further comments regarding this FCC decision or any related matters?

No.

Telephone Interview Transcript
Ginny Z. Berson
Vice President
National Federation of Community Broadcasters

October 22, 2004

1). What is your understanding of the FCC's *Spindale Decision*?

The FCC is very concerned that noncommercial broadcasters do not carry advertisements and do not receive in any form what is known as 'consideration' in exchange for promoting the goods and services for for-profit companies. And that's what's really behind this— so, the particular action was intended to lay out some outlines for how a nonprofit noncommercial radio station can co-sponsor or sponsor an event with a for-profit organization and what NCEs can say about the event over the air, because the FCC only regulates on the radio what goes over the air. So you could, as a noncommercial radio station, sponsor an event with a for-profit organization, but if you never mentioned in on your air, the FCC would not be concerned. What they were trying to do was to set some parameters for how you talk about these joint events on the air. The intent was to limit the ways that noncommercial stations could talk about their sponsorships and co-sponsorships with for-profits.

2). How do you feel that the decision impacts interactions with for-profit arts organizations?

That's hard for me to answer because I'm not a radio station. So I don't know how difficult it has made those interactions. I suspect it's made them a little more difficult because of the language. If you're working with a for-profit organization and you are receiving consideration, then you can only use language that's basically underwriting

language, which is very restrictive. You cannot do promotional language. So I would imagine that stations may have found it more difficult to arrange these sponsorships, because frequently with the for-profit ones there are a lot of promotions; and basically, it's difficult to do that. You can mention it a thousand times, but it has to be a very factual [announcement]-- there's no "it's going to be great," there's no "I really hope to see you there." None of that is allowed if there's consideration and if it's with a for-profit. So, my guess [is] that it's certainly made it more difficult to work out the details. I would imagine it has made some for-profits a little hesitant to have NCEs as co-sponsors.

3a). How does the decision impact interaction with nonprofit performing arts events?

If the venture is with a nonprofit, from the FCC's perspective, there really are no limits on what you can say.

3b) Even if there's a for-profit artist involved?

That's one of the questions that's not clear. We did a workshop on this at a community radio conference, I guess it was 2002 or maybe 2003, one of the years after the decision, and we had two different communications lawyers on the panel who said two different things. One of them said that if anybody is making money, for example, if the artist is getting paid based on the gate, then you have a problem.

But, there was another question which was what if this was a thing where you have for-profits selling food? In your promotion you're not saying "come to the concert and eat," but when you buy a ticket you get access to them and so their business is dependent upon having people at the event and so by promoting the event you're essentially promoting those businesses. And one lawyer said that's not acceptable and another

lawyer said that is acceptable. I certainly don't have any idea what the correct answer is, and we won't know that until a complaint is issued and it's a case up before the FCC and the FCC rules. So you could have a nonprofit event- let's say KBOO in association with the Greater Portland Arts Council sponsors a day-long festival of music and culture, and the artists are being paid a flat fee, so that's not really an issue, and the Greater Portland Arts Council is a nonprofit, but they have local restaurants set up in booths to sell food- [in a case such as this] we don't know the answer whether you can promote it or not. We just don't know.

3c). If a for-profit artist came on to an NCE's program for an interview and hypes the event, is that covered by restrictive language as well?

That depends on whether the station is receiving consideration, so yes, that would be a problem. If the station is getting consideration, then nobody can promote it on the air. The artist can come on and say "I'm doing it," and "This it when it is," and the deejay who's interviewing the artist can talk about what a great artist this person is, but he can't say "we want to see you there" or "this is going to be a great show." But the truth is that somebody has to file a complaint. On one hand I want to say that it's unlikely that someone would file a complaint and that the FCC is going to fine a station for that, but on the other hand, who knows? So what [a deejay needs to do] is [to] warn the artist that he can't really promote it. [A deejay can] talk about the music, that the artist is glad to be here, what they're going to perform tonight, who else is going to be there, and we can keep telling people where it is and when it is and where they can go for more information, how wonderful your new CD is. Whatever. So it's not that restrictive.

4a). What sorts of questions have your affiliated radio stations asked you concerning this decision?

They're basically presenting me with different scenarios and then asking how they can do this. Basically, what are the rules, and what language can they use under what circumstances. The circumstances are always a little bit different. There's always some little twist that makes it complicated. And they ask a lot about it. I've written a lot about it. We have a monthly newsletter and I write a column every month and a lot of that is about FCC regulations, and I've written about this [Spindale] three or four different times just saying the same thing over and over because people forget and it's impossible to retain this in your brain I think. There's another issue here and this is the thing that's not at all clear: Because the NFCB joined with some other organizations in challenging a particular part of the decision. And the FCC basically said that we had no standing in challenging the decision. Then they changed the decision in the way that we wanted them to, but they never explained it, so it's very unclear what it means and this is the part of it: Publicity which comes to the station as a result of attaching your name to a for-profit event might not be consideration. They had originally said that just by attaching your name to the event, you were getting consideration because you were getting publicity. Then they didn't say it is, but they didn't say it isn't. So [in the newsletter] what I wrote is that you could therefore sponsor an event with a for-profit company and use promotional language on the air, and as long as you receive no money or other consideration you might not be in violation of FCC regulations, but we don't know. Because they just changed that without explanation, we don't know what they mean.

4b). Is there anyone you can go to clarify the decision?

You can ask for a staff opinion, but a staff opinion is only a staff opinion. It's not binding. Now what it means is if you can get a staff opinion, because you can't always get a staff opinion, frequently, the staff will say "we have no opinion" until the commissioners rule. If you get a staff opinion and you follow the staff opinion, and then someone files a complaint and the commission rules against you, the fact that you have gotten a staff opinion will mitigate any fine that you might get. So, it's pretty unlikely that the FCC would say, "We know that our staff told you to do this, and you did it, but we don't think the staff is right so we're going to fine you \$10,000." What's more likely is that the FCC would say, "the staff told you to do this and you did it, and we don't agree with the staff so we're going to admonish you but there's no fine." But, for the next time, the next station that does what you did will be fined. That's the way they work. Once they have set policy, you have to follow it. Until they set policy on a particular issue, your guess is as good as mine, but they're not likely to fine you for violating a policy that they haven't set yet. But they will admonish you and they expect then for everybody to know that this is a new ruling and everybody has to follow it. That's the way they work.

4c). If a station has been admonished in the past, are they likely to face heavier *fines*?

Yes, but if you're getting staff opinions, then I would say "no." Part of it is that I don't know. I know in underwriting, for example, that if- you're not likely to get more than one admonishment about underwriting unless you're getting a lot of staff opinions about particular things, which you're not really likely to get. Once you've been admonished for doing "x" you can't do "x" again without getting a fine. If you're admonished for doing "x" and then you do "y," and y is also unclear, there's no stated policy, then I don't know whether they would count the fact they admonished you about "x" against you. I just

know. If they set a policy on something, and even if it's your first violation, you will get fined for it. If there's a policy about it- if they've ruled on this particular language they say, for example, 'you cannot have promotional language in underwriting.' So you cannot then do underwriting with promotional language and say to the FCC, "but it's our first violation," and have them say, "Well then OK." Because it's very clear that you cannot do that. So the answer is a little murky.

5). What have you advised them to do in regards to the decision?

There are three major parameters that the FCC has set out: One of them is "absence [of consideration]," then you can use promotional language to promote your sponsorship. And the three parameters are: The event is for-profit, you're using promotional language, you've received consideration. Absent one of those- the event is nonprofit or you haven't received consideration, then you can use promotional language. And that's basically what the stations are asking. Of course, it's never clear cut. If the artist is getting a percentage, then that would be considered for-profit. Then the artist is really for-profit. Because then your promotion- the gate, matters to the artist, so then your promotion of it is increasing the artist's take. So, what I've been advising stations is basically [advising] them of what my understandings of the rules are and I've written about it several times in the newsletters to try to clarify it.

6). Do you feel that this decision prohibits practices that were once allowable under FCC policy? If so, then to what degree?

You know, I don't know.

7). What other concerns do you have in regards to this FCC decision?

My biggest concern is the lack of clarity. The other thing that's tricky about this is there's a question about ticket giveaways and CD giveaways: Can a station still give away CDs, tickets, and other prizes for on-air contests where the prizes have been donated to the station by a for-profit business? Stations do this all the time and the answer is, yes, stations can still do that unless the contribution is not a gift, but is consideration for an on-air mention. In the Isothermal case, the FCC concluded that the tickets that they were giving away were exchanged for on-air mentions and that was based primarily on the fact that the tickets were part of an organized promotional campaign. Of course, the tickets are always given away as part of an organized promotional campaign. Why else would they be given away? So that is confusing. And the part of it that is troubling is that, let's say you are a club, and you're an underwriter and you want to give away tickets to a show.

The fact that you're an underwriter you're actually punished for being an underwriter in a certain sense, because if you're an underwriter, all [the station] can do with these tickets is to use underwriting language: "Joe's Bar & Grill. I have three pairs of tickets to see Willie Nelson tonight at Joe's Bar & Grill on 1329 East 13th street at seven o'clock. I will give them to callers numbered four, five and six." Period. Now if Joe's Bar & Grill is not an underwriter, you can say much more. You can say, "It's going to be a great show, I hope to see you there, Willie Nelson- this is a rare opportunity." The fact that you are an underwriter, and what the FCC is trying to do is prevent stations from promoting the goods and services of underwriters, thus turning them into advertisers, but the other effect is that basically it's saying 'because you're an underwriter, you can do less, we can say less for you than if you weren't an underwriter.' So it pays not to underwrite in a certain way. It's really problematic.

8). Do you have any further comments regarding this decision?

It's a difficult decision and it's difficult to interpret.

9). How often are you noticing unclear decisions?

Frequently. Their indecency stuff is very unclear at this point. It has gotten much more unclear. They also talk about profanity as being unacceptable, without any definition of profanity. We don't have any idea what that means. I know what it means to me, but I don't know what it means to them. Sometimes they're very clear, but look at the Bono situation with the Golden Globes. It's OK? It's not OK. Well, I understand now that it's not OK. But it was OK to say 'fucking' because it was used as a gerund and not describing sexual intercourse. Well, I'm sorry, but I think that's ridiculous. I think it's ridiculous that you can't talk about sex on the air, but that's not the point. To say that this word, which is like the word that is considered the worst word that you can use in broadcasting is OK in this context because it's an adjective? I think the whole indecency from the beginning is all very foggy is not clear. There's no standard. There are other things where it's very clear, the rules are very clear. The indecency rules, the vagueness of those have much greater implications, much more serious implications than the Isothermal case. You wind up with a huge amount of self censorship and a lot of actually important information doesn't get broadcast, and important arts programming doesn't get broadcast because people are afraid they're going to get whacked with a huge fine. That's a serious issue more so than this. Isothermal is inconvenient, it's somewhat burdensome, it's difficult to understand, but it doesn't actually prohibit speech in any way. It doesn't prohibit activities in any way. It proscribes the kind of speech that you can use to promote events on the air, which is not to me, in the same category of seriousness as prohibiting a whole class of speech.

APPENDIX B
HUMAN SUBJECTS CLEARANCE

University of Oregon
125 Chapman Hall



Graduate School
(541) 346-5129

REQUIRED CLEARANCE FOR MASTER'S THESIS/PROJECT OR DOCTORAL DISSERTATION

TYPE OR PRINT

Student Name: Gould Richard E

Address: 1574 Coburg Rd #223 Eugene OR 97401

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Major: Arts Management Department: AAD

Requesting clearance for: Master's Thesis Master's Project Doctoral Dissertation

Title of thesis/project or dissertation:
From Appalachia to Oregon: How an FCC Decision
Involving a North Carolina Radio Station is Affecting

Title of human subjects project, if different: Eugene, Oregon's Public Broadcasters
and Arts Organizations

Student Signature: Richard Gould Date: Apr 11, 2004

FACULTY ENDORSEMENT OF RESEARCH

This is to certify that the department approves the research project as identified above.
Advisor Name: Janece St. Aubert Department: AAD Signature: Janece St. Aubert Date: 4-12-04
Department Head: Doy H. Bly Department: AAD Signature: Doy Bly Date: 4/12/04

ANIMAL SUBJECTS RESEARCH

Yes No This thesis/project or dissertation involves animal subjects research.

If yes, obtain approval of the research protocol from the Institution Animal Care and Use Committee (IACUC) before purchasing or using animals.

Protocol #: _____ Approval Date: _____

Verification of IACUC Approval: _____ IACUC Office Signature _____ Date _____

HUMAN SUBJECTS RESEARCH

Yes No This thesis /project or dissertation involves human subjects research.

If yes, obtain approval of the research protocol from the Committee for the Protection of Human Subjects (CPHS) before collecting data.

Protocol #: X513-04 Approval Date: May 13, 2004

Verification of CPHS Approval: _____ Human Subjects Compliance Office Signature _____ Date 5/13/04

GRADUATE SCHOOL APPROVAL

Approved Disapproved

Signature of the Dean or Associate Dean of the Graduate School _____ Date _____

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