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NEWSLETTER

FCC Examines Noncommercial Operating Agreement

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The Federal Communications Commission (FCC) is closely examining the operating agreement the University of San Francisco entered into with Classical Public Radio Networks, LLC (CPRN) — a nonprofit largely owned by the University of Southern California — to run KUSF (FM), San Francisco, CA (90.3). As part of the transaction to sell KUSF to CPRN, the parties executed a "Public Service Operating Agreement" (PSOA) pursuant to which CPRN provides classical music programming to be broadcast on the station ahead of the proposed sale in exchange for monthly payments. The operating agreement raised a red flag with the FCC, which noted that "[t]he terms of the PSOA present issues involving the parties' compliance with Commission rules and policies concerning the operation and control of the Station."

Under the agreement, licensee University of San Francisco agreed to make KUSF's facilities available to air programming supplied by CPRN "for up to 24 hours a day, seven days per week" for the term of the agreement, while the licensee retains control over the station's programming, transmitter and broadcast equipment, oversees day-to-day station operations, and ensures compliance with Commission rules. In consideration for making station airtime available to CPRN, the agreement provides for reimbursement of the licensee's delivery and broadcasting expenses, and it also provides for a monthly payment of $5,000 per month by CPRN to the licensee for the first 120 days (and $7,000 per month for the remainder of the first year), as well as CPRN's retention of all listener contributions, underwriting revenue, and other station support during the term of the agreement.

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On June 28, 2011, Audio Division Chief Peter Doyle sent a letter to the parties, including a list of 15 questions and requests for information about the operating agreement and how the station is operated and programmed. Specifically, the letter inquired as to how many hours the station broadcasts programming provided by CPRN and where and when the programming was produced; whether the licensee preempted or rejected any CPRN programming; the ability of the licensee to originate programming at the main studio location; the licensee's process for reviewing and evaluating programming supplied by CPRN; the names and titles of station employees; and documents related to station operations, including payment of rent, salaries and utilities. The letter also asked for an itemized accounting of donations and underwriting receipts.

Asking both parties to explain the legal basis for their agreement, the letter further inquired: (i) how KUSF's airing of CPRN's programming furthers the licensee's obligation to use the station for advancement of an educational program; (ii) how the monthly compensation complies with the limits on consideration to noncommercial educational licensees; and (iii) how the operating agreement does not violate the restriction on third-party fundraising, given that it permits CPRN to be the station's sole programmer and to retain all donations, underwriting receipts and station support during the term of the agreement.

The nature and breadth of the inquiry suggests that the FCC may be digging more deeply into whether noncommercial stations have been entering into agreements similar to local marketing agreements (LMAs), despite rules restricting noncommercial stations from selling broadcast time, which may result in a sharpening of regulation on noncommercial radio.