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October 19, 2004

Kathleen Cox, Esq., President and CEO
Corporation for Public Broadcasting
401 Ninth Street N.W., Second Floor
Washington, DC 20004-2129

Re: Complaint and Request for CPB Emergency Action: Proposed FCC Assignment of
WCAL(FM), Northfield, MN from St. Olaf College to Minnesota Public Radio

Dear President Cox:

I am writing this complaint on behalf of SaveWCAL, Inc., a Minnesota nonprofit organization, to bring your attention to the above-referenced transaction, which is currently pending at the Federal Communications Commission. We believe this transaction violates several provisions of the Public Broadcasting Act¹ which, as you know, are under the jurisdiction of CPB. In addition, we believe that, if this transaction is consummated, it would result in the illegal conversion of federally appropriated and CPB disbursed funds into a private windfall for longtime CPB-grantee, St. Olaf College. SaveWCAL urgently requests the following actions from CPB:

1. That CPB request its grantee, St. Olaf College, certify that it has provided the statutorily-required Public Notice² of its intention to hold a governing board meeting to consider a public broadcasting matter, and for any and all meetings of its Board of Regents at which any issue affecting or involving its station WCAL(FM), particularly any such meeting at which the sale or assignment of such station was considered, discussed, or voted upon.

¹Pub. L. No. 90-129, 81 Stat. 365 (1967), codified, as amended, at 47 U.S.C. §§ 396 *et seq.*

² The Public Notice and Open Meeting requirements of the Public Broadcasting Act are codified at section 396(k)(4), which prohibits CPB from distributing funds to a station unless meetings of the station's governing body are open to the public and have been "preceded by reasonable notice to the public. All persons shall be permitted to attend any meeting of the board . . ."

2. That CPB request its grantee, St. Olaf College, certify that any and all meetings of its governing board, which dealt with the public radio station, including but not limited to meetings which in any way dealt with the potential sale or assignment of WCAL(FM), have been open to the public.
3. That CPB inform its grantee, St. Olaf College, of its intention to seek disgorgement of CPB funds from 1970 to the present, with interest, from the \$10.5 million proceeds of the proposed assignment.
4. That CPB file an immediate protective lien against the WCAL(FM) assets held by St. Olaf College to secure and protect any CPB claim for the return of appropriated funds from the proposed transaction.
5. That CPB request the Federal Communications Commission to defer action on the pending assignment of the St. Olaf station until CPB is satisfied that the requirements of the Public Broadcasting Act have been met and that right of CPB to reclaim appropriated funds from the proposed transaction have been properly protected and secured.

BACKGROUND

St. Olaf College has been the licensee of legacy public radio station WCAL(FM), Northfield, MN, and its predecessor stations, since 1918. In 1998, St. Olaf College also became the licensee of KMSE(FM), Rochester, MN, which rebroadcasts the signal of WCAL(FM) in southeastern Minnesota.

On August 10, 2004 St. Olaf College announced that its Board of Regents had approved, during the Board's August 5, 2004 meeting, the assignment of WCAL(FM) and KMSE(FM) to Minnesota Public Radio for a purchase price of \$10.5 million dollars. On August 30, 2004 St. Olaf College and Minnesota Public Radio filed an assignment application for the proposed transaction with the Federal Communications Commission. On September 2, 2004 the FCC gave public notice of the proposed transaction.

On October 4, 2004, SaveWCAL filed a Petition to Deny the station assignment with the Federal Communications Commission. A copy of that Petition to Deny is attached to this complaint as Exhibit A. SaveWCAL is composed of long-term listeners and financial supporters of WCAL(FM) and KMSE(FM), many of whom are alumni of St. Olaf College. These persons are concerned not only about the loss of WCAL(FM)'s unique classical music format, but also about the failure of St. Olaf College to account to the community of license, including donors, subscribers, and underwriters, regarding such matters as potential sale or transfer of WCAL's contributor/donor lists to MPR. In addition, St. Olaf College and MPR have not filed the full set of transactional documents regarding this sale, including all attachments and exhibits, with the

FCC, have not placed all such documents in WCAL's public file, and have not obtained the consent of contributors and donors to the transfer of donor/contributor information. A list of "schedules" to the Asset Purchase Agreement, which was belatedly filed with the FCC on October 13 (more than a week *after* SaveWCAL brought this deficiency to the FCC's attention), does not provide enough detail to permit one to eliminate the possibility (indeed "probability") that donor/contributor information is among the "proprietary information" that the parties to the transaction have attempted to hide from the public.

SALIENT FACTS

1. St. Olaf has been a CPB grantee since 1970. In the years since that date (over one-third of a century), the college has received millions of dollars in CPB community service grant funds. Its CSG annual funding has ranged from \$7,500 in 1970 to over \$200,000 in recent years.
2. According to the members of SaveWCAL who live in the community of license, St. Olaf does not appear to have been in compliance with the Public Broadcasting Act Public Notice and Public Meeting provisions for a number of years. Specifically, according to the Declaration under Penalty of Perjury from Paul Peterson, the former general manager of WCAL(FM), no public notice was given that the St. Olaf Regents would discuss the potential sale of WCAL(FM) at their August 5, 2004 meeting. In addition, the August 5, 2004 Regents meeting itself was not open to the public. (*See* Exhibits B-1 and B-2, Declarations of Paul Peterson).³
3. In another related Declaration, W.B. "Skip" Chapin, the treasurer of SaveWCAL, relates a conversation with Alan J. Norton, the Vice President and Treasurer of St. Olaf College. In that conversation, Mr. Norton acknowledged his unfamiliarity with the Public Notice and Open Meeting requirements of the Public Broadcasting Act and admitted that the Regents' August 5, 2004 meeting had not been open to the public (*See* Exhibit C).

DISCUSSION

It is well-settled law, under the Communications Act of 1934, that all broadcast stations, including public broadcasting stations, are held as public trusts, subject to the public interest, convenience and necessity standards of the Federal Communications Act.

With the passage of the Public Broadcasting Act, Congress developed a mechanism by which

³ Regrettably, MPR itself has been cited by the Deputy Inspector General of CPB, who found "little evidence" that meetings of MPR's governing body "were open to the public or that the public was made aware of those meetings." *See* Exhibit D, April 25, 2001 Audit Report.

appropriated funds for public radio and TV stations would be channeled through CPB in order to help develop, build, and support individual public broadcasting stations within the larger public broadcasting system. It is without question that St. Olaf College, and WCAL(FM), have benefited enormously from millions of dollars of CPB funds. CPB funds, along with contributions from individual listeners and a wide variety of public and private sector donors and underwriters have, over the years, built WCAL(FM) from an ambitious but tiny pioneer educational station into one of the acknowledged giants in the world of broadcast classical music. A great deal of value has been created in WCAL(FM) over the years with the use of funds provided by third parties – CPB in particular. Those funds have been provided with the understanding that an increasingly secure financial base was being developed for St. Olaf College to operate WCAL(FM) for the benefit of the residents of its community of license and coverage area.

The proposed assignment of WCAL(FM) to Minnesota Public Radio strikes at the very heart of the St. Olaf representations to every funder of that station over the years, including CPB. While SaveWCAL recognizes that licensees cannot be forced to be an involuntary public trustee and that St. Olaf has a legal right to divest its stations, that right is not absolute. Under the proposed transaction with MPR, St. Olaf proposes to transfer the bare trust asset (the stations) to a third party, while the College itself stands to pocket a hefty financial windfall for an asset that has been nurtured largely with funds from third party donors. This windfall will be the College's reward for abandoning its public trusteeship and its loyal subscribers, donors, and underwriters in its community of license.

In this complaint, SaveWCAL does not argue that St. Olaf should be required to operate its stations against its will. Rather, SaveWCAL argues that St. Olaf should not be allowed to convert, to its own private use, CPB disbursed and federally appropriated funds, and other funds from third party donors, which have been provided to increase the financial security of WCAL(FM). Even if Minnesota Public Radio were to provide a good potential home for the stations (which SaveWCAL and the independent public radio stations in Minnesota strongly dispute), the \$10.5 million purchase price pocketed by St. Olaf College would be money wrongfully misappropriated from CPB and every station donor since 1970. SaveWCAL also specifically complains and requests CPB action with respect to St. Olaf's apparent violation of section 396(k)(4) and potential violation of section 396(k)(12) of the Public Broadcasting Act.

CONCLUSION

CPB and public radio and TV stations have survived many trials, hardships and adversities during the nearly 40-year history of public broadcasting. This proposed transaction, however, contains within it the potential seeds of destruction for the entire public broadcasting enterprise.

Suppose, for the sake of discussion, that it is legal for any long-term public broadcasting licensee to divest its stations at market value and keep the proceeds for activities unrelated to public

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broadcasting. Left unchecked, this is surely a formula that could lead sooner or later to the sale of public broadcasting's most valuable assets, without any return to CPB or the public who built up the system. We believe that allowing this transaction to go forward could also be devastating to future Congressional support for CPB. A system lacking financial integrity, or the ability to protect its own assets from being siphoned off, can hardly seek continued public funding.

CPB cannot ignore its fiduciary obligations under the Public Broadcasting Act with respect to this transaction. CPB cannot simply allow St. Olaf College to pocket \$10.5 million from sale of an asset that was built and nourished with CPB-appropriated and other donated funds. CPB's obligations with regard to this transaction are all the stronger because St. Olaf and MPR have both flouted the very requirements of section 396(k)(4) of the Public Broadcasting Act that governs the distribution of CPB funds. Furthermore, in violation of subsection (k)(12) of that section, the parties have kept this transaction secret from the public in the community of license, including the possible sale or transfer of donor and contributor information without having first notified, and obtained the consent of, those donors and contributors.

I would be happy to discuss this matter in further detail with you and your staff. In the meantime, urgent action is required on CPB's part to prevent an impending financial and political disaster for CPB and the public broadcasting system.

Sincerely,



Ernest T. Sanchez
Counsel for SaveWCAL, Inc.

Enclosures

cc. Marlene K. Dortch, Secretary, Federal Communications Commission

Ruth W. Sylte, President, SaveWCAL, Inc.

Todd W. Stansbury, Esq.
Wiley, Rein, & Fielding, L.L.P
Counsel for Minnesota Public Radio.

Dawn Sciarrino, Esq.
Sciarrino & Associates, PLLC
Counsel for St. Olaf College
(All enclosures have already been provided to the above-listed parties)