PSOAs and Other Extreme Sports

2013 Public Radio Super-Regional Meeting

LAWRENCE M. MILLER
SCHWARTZ, WOODS & MILLER

JOHN CRIGLER
GARVEY SCHUBERT BARER
I. Collaborative Agreements we know and love

II. Public Service Operating Agreements (PSOAs)
I. Station Collaboration Agreements

1. Program/Network Affiliation Agreements

- Right to Preempt
- Right to Edit
- Exclusivity
- Termination
2. Master Control Agreements

- Main studio rule
- Exit strategy
- In bed with a competitor?
Station Collaboration Agreements

3. Agreements to Outsource Underwriting, Accounting, Recruitment Functions

- Compliance with FCC underwriting policies
- Maintaining records for FCC and CPB
Station Collaboration Agreements

4. Joint Production Agreements

- Who’s in charge here?
- Who insures?
- Who controls the copyright?
- What distribution?
Station Collaboration Agreements

5. Joint Employment Agreements
II. PSOAs

Call me a . . . Management Agreement, Local Marketing Agreement, Time Brokerage Agreement, Programming Agreement, Joint Programming Agreement, Public Radio Operating Agreement or Public Service Operating Agreement (“PSOA”)
PSOAs

But don’t call me a “Lease”
Why?

The relevant FCC Rules:

73.503(c) and 73.622(e), whatever they mean

“A noncommercial educational ... station may broadcast programs produced by or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee. The payment of line charges by another station, network, or someone other than the licensee of a noncommercial educational ... station, or general contributions to the operating costs of a station, shall not be considered as being prohibited by this paragraph.”
The KUSF Decision

Whatever it means

Order and Consent Decree: http://tinyurl.com/ljq3p3f
Media Bureau Statement: http://tinyurl.com/k7vlclx
Main studio requirements

1. Location
2. Staffing
3. Technical capabilities
Regulatory Basics for PSOAs

Control

1. Programming
2. Personnel
3. Finances and facilities
Exit Strategy

Term and Termination Rights

- Short-term
- Long-term
- Option to extend
- Option to buy
License

a. Pro – Retain license
b. Con – Retain Licensee responsibilities
Money

a. Pro – Reduce or eliminate subsidy

b. Con – Still incur most costs, even if reimbursed, but cannot make a profit
PSOA Pros and Cons

Legal Compliance

a. Pro – Reduce regulatory responsibilities

b. Con – Retain ultimate responsibility for FCC and CPB compliance
PSOA Pros and Cons

Financial Reporting

a. Pro – Simplify accounting
b. Con – Maybe not
PSOA Pros and Cons

Regulatory Certainty

a. Pro – Ground rules clearer after KUSF

b. Con – Remaining uncertainties:
   third party fundraising, definition of “costs,”
   personnel requirements, renewal “expectancy”
PSOAs and Other Extreme Sports

Two pros (no con):

John Crigler  
Garvey Schubert Barer  
jcrigler@gsblaw.com

Larry Miller  
Schwartz, Woods & Miller  
miller@swmlaw.com