

October 15, 2010

Dear Governor Chris Christie
Senate President Stephen M. Sweeney
Assembly Speaker Sheila Y. Oliver
Senate Minority Leader Thomas H. Kean, Jr.
Assembly Minority Leader Alex DeCroce

Pursuant to SCR113/ACR138, the Assembly Majority members of the Legislative Task Force on Public Broadcasting are pleased to submit their recommendations.

Following much deliberation, the Assembly Majority members of the Task Force have arrived at the following recommendations as a supplement to the main Task Force report.

Sincerely,

Louis D. Greenwald
Vice-Chair

Assembly Majority Member Recommendations

to

The Legislative Task Force on Public Broadcasting

Assembly Majority Task Force Members

Honorable Louis D. Greenwald, Vice Chair

Honorable Nellie Pou

Honorable Thomas Giblin

Vision

These recommendations establish a clear vision for the future of public broadcasting in New Jersey. This vision contemplates foreseeable obstacles to the establishment of a privately-funded, self-sustaining, non-profit organization(s) able to maintain the primary mission of New Jersey-focused television and radio programming representative of New Jersey's diversity.

Primary Goals of Assembly Majority Task Force Members

- Continue New Jersey-centric programming through any restructuring, including nightly news and weekly programs that represent the cultural diversity of New Jersey.
- The entity chosen to continue New Jersey Network's (NJN) mission should establish an operating structure that ensures a swift transition to a broadcaster that is reliant solely on private funding.
- New Jersey Public Broadcasting Authority (PBA) and the Foundation for Public Broadcasting (Foundation) employees shall receive equitable and fair consideration in all matters relating to the restructuring of New Jersey's public broadcasting infrastructure and financing and shall receive due process before any adverse action is taken against those employees.
- A commission should be established to effectuate any restructuring of the PBA and Foundation and should consider recommending direct, but limited, State support, for a transitional period. This direct State support might include facility and license lease agreements, grant funding for programming and a transfer of current agreements for towers and other assets presently under lease. Support could also take the form of initial capital and/or a continued, but waning, annual appropriation or transfer.

Legislative Commission

The rapid transition from a State entity to a non-profit as proposed by the Governor and supported by the Legislature cannot be implemented in the anticipated timeframe.

Therefore, the Assembly Majority members recommend the creation of a commission that includes both executive branch and legislative members.

A commission could be established in statute and be responsible for the approval and implementation of all acts related to the transition of the PBA and the Foundation to a non-profit entity. The commission shall be made up of the State Treasurer and members appointed by the Senate President, the Assembly Speaker, the Assembly Minority Leader, and the Senate Minority Leader.

The recommendations and considerations presented in this report are intended to assist the commission and Executive Branch as they navigate through obstacles, deliberate decisions and ultimately construct relationships and an institution that will ensure the prosperity of any successor public broadcaster.

State Ownership of Licenses/Long-term Lease

The State should dismantle the PBA through legislation, placing all of the PBA's assets into a trust. The State should not transfer or sell NJN assets, including the radio and television licenses, while the commission contemplates the restructuring of the State's public broadcasting system. Rather, the State should maintain ownership of all or some of the licenses and establish long-term leases with the non-profit entity that will operate public broadcasting in this State. Under no circumstances should these assets be sold without a proper and deliberate examination period.

A public-private partnership constructed through long-term leases will provide: 1) a secure financial foundation for an invigorated public broadcasting operating structure; 2) maintain State ownership of increasingly valuable State assets; 3) engender confidence in private sector funders; and 4) assure the future success of New Jersey-centric programming for both radio and television.

Benefit of a Long Term Lease

- Since the State cannot require a private, non-profit entity to broadcast New Jersey-centric programming through the sale or transfer of the licenses, the only way to mandate that a private, non profit broadcast NJN-type programming in the future is through State ownership and a lease agreement. Through ownership and a long-term lease agreement, the State can contractually hold the lessee to uphold the NJN mission as stated in the New Jersey Public Broadcasting Authority Act of 1969:

“Public broadcasting includes all aspects of non-commercial radio and television, open and closed circuit, including the production and dissemination of public and community affairs, educational, cultural and instructional information to the public at large within the State.”

- The television and radio licenses must remain with the State since the value of these assets may increase exponentially should the federal “National Broadband Plan” be implemented. The State, not a private, non-profit entity, should be the benefactor of any increase in value of these licenses. Any lease agreement between the State and a private, non-profit should preserve the State’s ability to sell the licenses upon a change in FCC regulation.
- State ownership provides the necessary flexibility to the State Treasurer and the commission as they work with non-profits to determine the most beneficial structure for continuing NJN’s mission. For example, following analysis and discussions with non-profits, the commission might determine that radio and television licenses should be leased to separate entities – one focused on radio and one on television. In the alternative, the State may engage in a lease relationship with one entity that envisions a complementary relationship between radio and television under one broadcaster. The State should maintain ownership of the assets until it is decided what is needed by the non-profit operating the network. Necessary assets may be leased to the operating non-profit while others may be sold.
- Given New Jersey’s unique location between two of the largest media markets in the country, and a decades long history of failed attempts at New Jersey focused television coverage, it is imperative that the State maintain ownership to ensure the State has the ability to continue New Jersey-centric public broadcasting should the non-profit entities fail in the future.
- Fundraising efforts would be enhanced through a partnership, as donors would understand the State’s significant interest and continued investment in the mission of the non-profit operating entity.
- Given the almost insurmountable obstacles to the planned rapid transition to a non-profit, continued State ownership would ensure that the commission would be equipped with leverage and provided time to manage a smooth transition to a non-profit entity.

Labor Issues

The commission should explore and encourage a restructuring that includes a continuation of the present employees’ union contract regardless of the new structure.

Alternatively,

- All efforts should be made by the commission to retain present employees, when appropriate, during the course of the State’s public broadcasting restructuring. However, appointments should not be filled when left vacant through attrition and employees who are near retirement should be encouraged to retire.

- Any restructuring alternative that contemplates the dismissal of current NJN employees should include a planned, deliberative effort to: 1) offer placement within a State department or institution so that they may continue as State employees; and/or 2) ensure former State employees are “first in line” for placement opportunities within the new entity.
- The commission should consider a “bifurcated” employee transition that includes maintaining State employee status in some instances while the employee works for the successor institution. A contractual relationship between the State and the new entity would allow such a relationship. Under no circumstances should new hires be State employees.

Financial Support and Analysis

In light of the numerous unanswered questions about meeting the timetable envisioned by the Governor and Legislature, and to ensure a successful transfer, the commission should consider identifying transitional support to the non-profit for a period of one to three years. The State would not be involved in the day-to-day operation of the non-profit and would not be expected to transitionally fund a new entity through an annual appropriation.

- The commission’s responsibilities should include scheduled financial assessments to determine the appropriate time to eliminate support upon the determination that the financial viability of the non-profit is assured. To that end, the commission shall have access to all necessary financial documents of both the Foundation and PBA in order to effectuate a comprehensive understanding of a transition.
- Any assets or properties owned by the State or other public entity that presently support the operation of the State’s public broadcasting system - that may not be components of the restructuring - may be leased or sold if the revenue generated through these leases is directed to the non-profit entity.
- Should the State decide to sell the television or radio licenses in the future, those monies should also be used solely for public media. All monies in the trust should be used for a public media purpose only.
- Educational Broadband Spectrum licenses should be placed in a trust. Educational Broadband Spectrum, a specific band of microwave frequencies, licensed to educational institutions or non-profit educational organizations for a variety of uses are often leased to telecommunications companies. Monies from these leases could be used to assist in the funding of the non-profit.
- In addition to four television licenses, the PBA operates seven radio licenses. While many experts are quick to say the sale of these currently underutilized radio stations would help the State supply transitional funding to the non-profit entity that will

operate the television licenses, a new owner of the radio licenses would not be obligated to cover New Jersey.

- A dedicated source of State revenue for public broadcasting would be an extraordinary State gesture by the commission intended to significantly enhance fundraising and public-private partnerships in the future.

Other Recommendations

- A private, non-profit entity must operate with greater autonomy than the present public structure provides. The entity should be empowered with efficient procurement procedures and the authority to hire and dismiss employees without bureaucratic obstacles.
- The ability to raise private donations expeditiously should be a primary determinant in the commission's evaluation of a new operating entity's worthiness to carry on the NJN mission.
- Appointments to the governing board of the entity that ultimately governs the mission of a new NJN should be approved by the commission and/or the Legislature. A governing body populated by New Jerseyans with a strong interest in the New Jersey-centric mission is fundamental. Legislative approval of appointees will work toward that end. As stated in S-2290/A-3280, the Governor should appoint four members to the board.
- The commission should entertain the idea of "spinning" off the news and weekly public affairs programming to a non-profit for fundraising purposes, while partnering with appropriate State departments or institutions to finance individual programs.