



Theatre Communications Group
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Memorandum

Date: October 20, 2011

From: Laurie Baskin, Director of Government & Education Programs, TCG

Re: Report on status of federal arts issues

TCG is a founding member of the Performing Arts Alliance, the Coalition of Performing Arts Advocates. The Alliance is a coalition of national performing arts service organizations dedicated to advocating for national policies that recognize, enhance, and foster the contributions the performing arts make to America. Its national network consists of more than 18,000 organizational and individual members comprising the professional, nonprofit performing arts and presenting fields. It is an effective grassroots advocacy organization, with tangible results from its work. Other founding members include The Association of Performing Arts Presenters, Dance/USA, The League of American Orchestras, and OPERA America. We are pleased to have more than doubled our organizational membership to now include: American Music Center, Association of Latino Arts and Culture, Chorus America, Fractured Atlas, National Alliance for Musical Theatre, and the National Performance Network. www.theperformingartsalliance.org.

Top Issues Update

Current Situation:

The Budget Control Act of 2011 created The Joint Select Committee on Deficit Reduction – aka the Super Committee - to craft a deficit reduction bill. The Committee’s report is due November 23. If the Super Committee does not agree on a set of proposals, that would set off the “trigger” of \$1.2 trillion in cuts allocated evenly among the Pentagon’s budget and domestic programs. The Super Committee’s recommendations will affect NEA funding, tax incentives for charitable giving – like the charitable deduction, and broadcast spectrum reform. In other words – we are in a perfect storm.

NEA Appropriations Timeline

- **FY11:** April 8, Congress reached an agreement on FY11 spending late in the day, averting a federal government shutdown. We learned on April 12 that the NEA had received a \$12.5 million cut, and the final FY11 budget is \$155 million. While we would like to avoid any decrease, this allocation is higher than House Appropriators initially approved (\$145 million) and higher than the President’s funding request for FY 12 (\$146.5 million) and higher than the House Walberg Amendment which passed and would have reduced the NEA by \$43 million. Given the climate in Washington, this allocation is higher than had been anticipated.
- **FY12:** April 14, TCG brought a witness to provide public testimony at a Hearing of the House Interior Appropriations Subcommittee – Mark Hofflund, Managing Director of Idaho Shakespeare Festival testified. Chairman Mike Simpson (R-2-ID) and Ranking Member James Moran (D-8-VA) were present for Mark’s testimony.
- On Monday, July 25, the House defeated, by a vote of 284-126, an Amendment introduced by Representative Tim Huelskamp (R-KS-1) which would have eliminated all funding for the NEA for FY12, along with many other programs. This Amendment was put forth on behalf of the Republican Study Committee.



- On July 27, the House defeated another Amendment introduced by Representative Tim Walberg (R-MI-7), which would have decreased the NEA's FY12 appropriation by \$10 million over the \$20 million cut already included in the Appropriations Bill. The Amendment to further cut the NEA failed in a bipartisan recorded vote 240-181 with 55 Republicans and 185 Democrats voting against the cut. There were passionate and inspiring Floor Speeches by Representative James Moran (D-VA-8), Ranking Member of the Interior Appropriations Subcommittee; Interior Appropriations Subcommittee Chair Mike Simpson (R-ID-2); Rep. Louise Slaughter (D-NY-28); Rep. David Cicilline (D-RI-1); Rep. Lynn Woolsey (D-CA-6); Rep. John Yarmuth (D-KY-3); Rep. Rush Holt (D-NJ-12); Rep. Bobby Scott (D-VA-3) and Rep. Betty McCollum (D-MN-3).
- Current status: Further House consideration of the FY 2012 Interior spending bill (HR 2584) was indefinitely postponed, leaving general floor debate unfinished. Further debate on HR 2584 was postponed pending resolution of the federal debt ceiling issues. The FY 2012 House Interior bill, as reported out of Committee, provides \$135 million in FY 2012 funding for the NEA, (\$20 million less than the current level, and \$11.3 million below the President's Request).

The federal FY12 fiscal year began on October 1. So far, the House has passed six of the twelve annual appropriations bills (Agriculture, Defense, Energy-Water, Homeland Security, Legislative Branch, and Military Construction-VA). The Senate has passed only the Military Construction-VA spending bill. A Continuing Resolution is in place which keeps the government funded and operational until November 18. This allows Congress more time to work on FY12 appropriations measures. It is expected that resolving the FY12 budget will be as contentious and down-to-the-wire as FY11 was. It will probably be decided in one omnibus spending bill or a series of several 'minibus' bills – and the NEA will most likely see a reduction from its current appropriation of \$155 million. (FY10 appropriation was \$167.5 million.)

Arts in Education Programs at the Department of Education

Funding: On May 25, the House Education and Workforce Committee approved HR 1891 which would eliminate the Arts in Education Program at the U.S. Department of Education, along with 42 other federal education programs. The lead sponsor of HR 1891, Education Subcommittee Chairman Duncan Hunter (R-CA), has called the Arts in Education Program “unnecessary.” This is an even more serious threat than the annual federal funding measures, as HR 1891 would permanently strip the language out of the Elementary and Secondary Education Act that allows the Arts in Education program to be funded each year. The full House has yet to take up the bill and the Senate has labeled it dead on arrival.

The Senate Labor, HHS and Education FY12 appropriation is approximately the same level of funding currently being administered by the US Department of Education in FY11, \$25.5 million.

The President's FY 2012 budget proposed consolidating a number of programs, including the Arts in Education programs, into a new funding category called *Effective Teaching and Learning for a Well-Rounded Education*. The budget proposal does not indicate exactly how or how much of this funding would be available to support arts education. The proposed consolidation has been rejected by appropriators in Congress. Arts advocates recommend that any major



restructuring be considered in the context of reauthorization of the Elementary and Secondary Education Act (ESEA.)

Reauthorization: Senate Health, Education, Labor, and Pension Committee Chairman Tom Harkin, D-Iowa, was expected to unveil a bill this week to modify and reauthorize the 2001 No Child Left Behind Act, with a committee vote scheduled for next week. Harkin has been working with ranking Republican Sen. Michael Enzi of Wyoming. The senators hope the bill will pass the committee with support from both parties. Unlike the House strategy to deal with K-12 issues piecemeal, Harkin's bill will be a comprehensive reworking of the law.

Tax - Charitable Deduction

President Obama's FY12 budget request, for the third year in a row, calls for a proposal to cap at 28% the deductibility of contributions by families earning more than \$250,000. The President's American Jobs Act also includes the 28% cap on deductibility and in the current climate of deficit reduction, the proposal has been given serious consideration. Independent Sector and nonprofits from all sectors are opposed to the proposal, projecting billions of dollars lost in charitable giving. Tax deductibility has been proven to have a significant impact on when and how much donors give. Further, nonprofit advocates are concerned that de-coupling the percentage of allowable deduction from the tax rate would set a dangerous precedent, and that deductibility could be decreased further in future years.

On Tuesday this week, October 18, the Senate Finance Committee held a hearing on "Tax Reform Options for Charitable Giving." Ranking Member Orrin Hatch (R-UT), other senators, and witnesses, including the president and CEO of United Way Worldwide, warned that proposals to cap the charitable deduction or convert the incentive to a tax credit could negatively impact charitable giving. Sen. John Thune (R-SD) pressed the panel to consider what would happen to nonprofit employment numbers if changes to the incentive led to a significant reduction in donations. Senator Charles Grassley (R-IA) issued a statement at yesterday's Senate Finance Committee against the president's proposed cap on the charitable deduction while at the same time calling for a hearing to examine standards for tax exempt organizations. Arts advocates are concerned about possible proposals to attach a diminished relative value to the arts, compared to social service sector nonprofits. The arts community needs to be really effective in our messaging regarding our collective contributions to communities.

Because this issue is critically important for our field, TCG participated in a very effective Tax Hill Day on October 6, organized by the Alliance for Charitable Reform, to advocate with members of Senate Finance, House Ways & Means, and the Super Committee, against the cap on charitable giving. On really short notice, we were joined by Amy Marshall, MD from Olney Theatre Center and James McNeel, MD from Contemporary American Theater Festival.

FCC – White Space

As I reported at LORT a year ago, on September 23, 2010 the Federal Communications Commission unanimously adopted a "Second Memorandum Opinion and Order" in its TV White Spaces proceeding. The Commission will permit the operation of new White Space devices, aka – TV Band Devices – but has also imposed protections for licensed and unlicensed wireless microphones such as those used in the performing arts.



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FCC White Space Ruling:

These are the interference protections available to wireless microphone users, adopted by the FCC:

- Two national "safe harbor" channels set aside for entities using wireless microphones – which the Commission expects will permit 12 to 16 wireless microphones in any location.
- Additional channels in most markets available for wireless microphone use – these channels are unavailable to TV Band White Spaces Devices (those channels occupied by or adjacent to broadcast television stations).
- If a wireless microphone user needs more than these interference-free channels, it will be permitted to register its uses in a planned geolocation database which would provide an interference protection mechanism. This registration will require a showing that the available channels are insufficient for its needs and must be submitted to the Commission 30 days in advance to permit public notice and comment.
- Wireless microphones used in the performing arts will continue to operate under Part 15 as legitimate users of the broadcast spectrum.

The FCC's Office of Engineering and Technology (OET) is working on rules for the implementation of a geo-location database. Once there is a functional database, the new White Space devices will be able to operate. These devices will need to consult the TV Band Databases to determine which frequencies are available for their use.

Who are the Database Administrators?

In its January 26, 2011 Order, the FCC designated nine entities to serve as TV band device database administrators. Microsoft has applied to be a tenth database manager. These are the nine entities: Comsearch, Frequency Finder Inc., Google Inc., KB Enterprises LLC and LS Telcom, Key Bridge Global LLC, Neustar Inc., Spectrum Bridge Inc., Telcordia Technologies, and WSdb LLC.

Recent Developments!

I contacted Production Managers in May regarding the FCC's requirement that theatres eligible to participate in the geo-location database, would submit their needs 30 days in advance, and that the application would be subject to Public Comment. At the May 20 FCC meeting, where I was joined by Josh Loar, Sound Supervisor at Yale Rep, we learned some very helpful and encouraging information about the FCC's current plans for the White Spaces database process: (Until details are formally released, it's still subject to change.) I went into that meeting armed with the 50 or so responses I'd received from many of you – thank you!

1. Theatres would have to 'certify' that they have exhausted the 2 safe-haven channels and other channels available in their area to participate in the database;
2. Theatres could actually submit their needs for an entire year – multiple productions – if your needs exceed the safe-haven channels. Submit your request 30 days before your first production and you'd be in the database for the year.



3. Theatres should only request the channels they actually need – and the good news is, if you request 2 channels and you get into tech and those channels don't work, you can simply swap them with 2 other channels and let the database manager know what your swap is – the database will be quickly updated. (The FCC doesn't care WHICH channels you use, only HOW MANY – and they will not tolerate warehousing channels – but since you can swap channels, there's no need to warehouse!)
4. Finally, theatres are not competing with each other or other performing arts houses for spectrum – you are ONLY competing with new White Space devices for frequencies. ie – the database will ONLY protect you from interference from White Space devices – not from other wireless microphone users. THEREFORE, wireless microphone users are encouraged to form coalitions, for example, The Lincoln Center Wireless Microphone Coalition or the Downtown Houston Wireless Microphone Coalition. The Coalition would identify 4 geographic coordinates and all the entities using wireless mics within those coordinates, including theatres, opera companies, dance companies, symphony orchestras, Broadway Touring houses, houses of worship, would pool their collective wireless microphone needs – if, collectively, your Coalition needs more than the 2 safe-haven channels and additional channels in your area, then you would request the additional channels that you collectively need. Then, sound engineers will have to coordinate with each other to eliminate interference.

Action Needed:

***** The FCC has announced a 45-day public test of the Spectrum Bridge database which began on September 19 and runs through November 2. The Commission is encouraging interested parties to participate in the test on Spectrum Bridge's test website. Full instructions for access to the trial and additional information are in the attached public notice and press release.**

Production Managers are urged to test the database! The safe-haven channel list is supposed to be available there. If you are asked to certify that you've used available channels, go ahead. Anything entered into the site will be erased at the end of the test. It will be especially helpful if you report back to me with any problems you see before November 2.

Josh Loar has already checked the database and had these comments:

- 1) The primary request I have for the site is to simply list which MHz bands are associated with each numbered television station that gets displayed. It's the information we need when programming our shows (mics are listed by MHz range, not by TV channel), and if it were simply there on the site with the TV station numbers, it'd be a vastly improved resource to those of us in the live event world.
- 2) The other request I'd have is that currently, it is only searchable geographically by longitude and latitude. It should either accept standard address data with ZIP code, or it should have a pipeline to Google maps or something that can take your address and auto-populate the request form with the correct long and lat measurements if that's what is needed. It seems cumbersome and strange to have to go to another application to determine your longitude and latitude just so they can tell you what stations are around you, when zip code should actually be enough to determine that.



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TCG is hopeful that the two safe-haven TV channels, the ability to register additional use in the geo-location database and the legitimacy afforded by Part 15, will allow theatres to continue to operate their wireless microphones without interference from TV Band White Space devices. TCG is a member of the Coalition of Wireless Microphone Users (CWMU) which has and continues to receive excellent counsel from Skadden, Arps.

Further broadcast spectrum auction is possible. There are currently six bills that have been introduced in Congress which, in various forms, involve auctioning off spectrum. What this could mean for our field is moving to a different portion of the spectrum, again, and at more cost and aggravation. The Performing Arts Alliance is sending a letter to the leadership of the House and Senate Committees that oversee the FCC, as well as the Super Committee that is currently considering deficit reduction, to the FCC and to the White House.

Arts Advocacy Day – April 16-17, 2012. I encourage you to join me in DC. As a field, we need to mobilize and be activist on all these issues in Washington. You are the constituents and your voices are important! Email lbaskin@tcg.org for more information!

Additional Issues We're Tracking:

- **Visa** – TCG works with the Performing Arts Visa Working Group to improve visa processing for artists from abroad. We continue to monitor the O and P visa categories to make sure the US Citizenship and Immigration Services is aware of the unique concerns of the arts community. USCIS reports that processing times have improved.
- **Cultural Exchange** – Following elimination of the United States Information Agency (USIA), the Cultural Programs Division relocated to the State Department under the Bureau of Educational and Cultural Affairs. ECA was funded at \$635 million in FY10 and \$598 million in FY11. The House subcommittee has recommended \$538 million for FY12, \$60 million below current funding levels and \$99 million below the President's request. ECA is developing an online arts portal which would serve as a convener, a discussion space and a marketplace. TCG and PAA have participated in enhanced training sessions on cultural diplomacy for Cultural Affairs Officers at the Foreign Service Institute.
- **IRA Rollover** – This tax provision allows donors aged 70 ½ and older to make charitable contributions directly from their IRA accounts up to \$100,000 per year, without paying taxes on the withdrawal. The provision was originally enacted in 2006 and has suffered from multiple expirations. It is currently set to expire on December 31, 2011, and arts advocates are working to have the provision made permanent.
- **Estate Tax** – Beginning January 1, 2011, the estate tax was reinstated for two years with a \$5 million individual exemption and a 35 percent rate. Independent Sector supports the President's proposal to permanently restore the estate tax at 2009 levels – a \$3.5 million exemption and a 45% rate.
- **Net Neutrality** – Internet users should be able to access any legal web content without restrictions imposed by their Internet Service Provider (ISP). The arts depend on an open Internet for the sharing of artistic ideas and programming, developing new



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work, cultivating new audiences and interacting with current constituencies. In September it was reported that the FCC's Net Neutrality rules have cleared the final regulatory hurdle required for the regulations to become law and go into effect. The regulations prevent both wired and wireless ISP's from blocking lawful content but do allow broadband providers to charge consumers different rates for different levels of service. There continue to be both legal and legislative challenges to the FCC rules on Net Neutrality.