



# **FINDINGS**

## **October 15, 2010**



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JOHN F. AMODEO



**New Jersey State Legislature**  
**LEGISLATIVE TASK FORCE ON PUBLIC**  
**BROADCASTING**  
STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

KEVIN J. DONAHUE  
*Office of Legislative Services*  
*Task Force Aide*  
(609) 984-7381  
(609) 292-0561 fax

CHARLES A. BUONO, JR.  
*Office of Legislative Services*  
*Task Force Aide*  
(609) 984-7381  
(609) 292-0561 fax

October 15, 2010

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

Pursuant to SCR113/ACR138, the Legislative Task Force on Public Broadcasting formally submits a report of its findings.

The Task Force would like to extend its appreciation to the Office of Legislative Services for their continued support and guidance. The Task Force also thanks the administrations of Stockton College and the Township of Montclair, which graciously provided their facilities for our public meetings.

Sincerely,

Nia H. Gill, Esq.  
Chair

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## I. INTRODUCTION

In 1968, a Commission created by Governor Richard J. Hughes conducted a six-month study into the role of public broadcasting in New Jersey. At that time, the Commission focused on educational television as an underdeveloped resource and made recommendations to move the State forward in a new era of broadcasting.

While the Hughes Commission concluded that New Jersey lagged far behind other states in providing a public broadcasting entity to its residents, the Commission was confident about the State's potential to harness the new opportunities and its ability to play a "pre-eminent" role in the new mode of communication.

On March 16, 2010, during the Governor's first budget address to the Legislature, Governor Chris Christie stated that New Jersey "does not need its own television network". The Governor acted upon his statement in his budget by eliminating funding to the New Jersey Public Broadcasting Authority as of December 31, 2010, and stating in budget language "that NJN will operate independently and New Jersey will no longer be in the public television business as of January 2011." Due to the Governor's statements, the Legislature believed it was necessary to undertake a review of public media in New Jersey. Thus, the Legislature created the bi-partisan Legislative Task Force on Public Broadcasting ("Task Force").

The Task Force's mandate, pursuant to Senate Concurrent Resolution No. 113, was to "study and evaluate, and develop recommendations relating to, a proposal to transfer the assets, including operating licenses, and operations of the New Jersey Public Broadcasting Authority . . . to an independent, not-for-profit organization".

The Task Force believes that the Hughes Commission was visionary in creating The New Jersey Public Broadcasting Authority ("Authority"). Not only did the Task Force grapple with many of the same challenges that the Hughes Commission faced 40 years ago, the Task Force shares the Commission's confidence that New Jersey can reemerge as a model public media outlet.

In 1968, a government operated television and radio station made sense; however, after an intensive review and careful deliberation, the Task Force finds that the State should no longer operate a public media outlet. The statute authorizing the creation of the Authority 40 years ago did not provide the Authority to negotiate and transfer the State's television and radio licenses to any entity. The Task Force, pursuant to its enabling resolution was not empowered to endorse or recommend any specific model or entity to assume the "New Jersey Centric" mission and operations of the Authority. In light of these determinations, the Task Force provides a list of guidelines and principles to serve as touchstones for negotiations.

During the Task Force's first meeting its Chair stated that, the Task Force "look[s] forward to working with [the Governor] for the benefit of the people. Because this is not the Governor's license, it's not the Legislature's license; it's the people's license."

It is with this sentiment that the Task Force is optimistic regarding the possibilities of this new era in public media and believes that the conclusions and findings contained in this report will provide the residents of New Jersey with a strong, vibrant and diverse public media outlet.

## II. HISTORY OF PUBLIC BROADCASTING

### 1) The Establishment of the New Jersey Public Broadcasting Authority

On January 26, 1967, a 15-member commission sponsored by the Carnegie Corporation of New York released its report, *Public Television: A Program for Action*. The Carnegie Commission concluded that the expansion of public television was necessary because of the stark differences between commercial and noncommercial broadcasting. Unlike public broadcasting, commercial broadcasting was thriving in 1967. The members of the Commission believed that in order for noncommercial broadcasting to flourish, it required the support of the federal government. The Report not only recommended that the Federal government allocate money to support public broadcasting, it also called for the creation of a national agency to assist with the development of this new public medium.

Most notably, the Carnegie Commission Report found that:

Public Television programming can deepen a sense of community in local life. It should show us our community as it really is. It should be a forum for debate and controversy. It should bring into the home meetings, now generally untelevised, where major public decisions are hammered out, and occasions where people of the community express their hopes, their protests, their enthusiasms, and their will. It should provide a voice for groups in the community that may otherwise be unheard.

Public Television programs can help us see America whole, in all its diversity.

Immediately following the release of the Carnegie Commission Report, Congress passed the Public Broadcasting Act of 1967, creating the Corporation for Public Broadcasting and authorizing federal funding for non-commercial television and radio outlets.

In 1967, many states were already broadcasting on noncommercial television stations, but New Jersey lagged behind the rest of the nation. In fact, at that time, New Jersey did not yet have a unified public broadcasting mission. Therefore, in response to the activity on the national level, Governor Richard J. Hughes formed the Governor's Commission on Public Broadcasting for the State of New Jersey, commonly known as the "Hughes

Commission.” The Hughes Commission was tasked to create a system for public broadcasting that could serve the information, education, cultural, and community needs of all New Jersey residents.

The Hughes Commission spent six months investigating and analyzing the status of public broadcasting in New Jersey and ultimately recommended that the State should authorize and establish the New Jersey Public Broadcasting Authority. This recommendation stemmed from part of the Hughes Commission’s conclusion that New Jersey as a whole lacked its own unique identity, i.e., a “New Jersey consciousness.” The conclusion was based on the State’s geographic location between two major metropolitan cities, as well as a perceived division between North and South Jersey. The Hughes Commission also believed that a State-wide public broadcasting system would allow for creative development, community progress and a greater understanding of issues beyond a mere recitation of the facts.

Finally, the Commission concluded that the Authority should be a “state-chartered, publicly-supported, autonomous instrumentality, charged with the responsibility for administering and managing a system of public broadcasting in the State of New Jersey.” The Commission believed that the creation of the Authority would be fundamental to an effective public broadcasting system for the State and would enhance “diversity and excellence in programming” and would further provide State residents “with a public broadcasting system that reflects freedom, imagination, and initiative and is truly responsive to local, regional, and state needs.”

Thereafter, the Legislature passed and Governor Hughes signed the “New Jersey Public Broadcasting Authority Act of 1968,” P.L.1968, c.405 (C.48:23-1 et seq.), establishing the Authority, the current operator of the New Jersey Public Television and Radio (“NJN”), to create and operate a Statewide system of non-commercial broadcasting stations. In 1969, voters approved a \$7.5 million bond issue to construct four transmitters and a broadcast complex. In 1971, NJN, then known as New Jersey Public Television, went on the air with newscasts and instructional programming used by elementary, high school and college students.

The Authority was empowered to “[e]stablish, own, and operate” noncommercial educational television or radio broadcasting stations; “[a]pply for, receive, and hold” licenses from the Federal Communications Commission (FCC); and “[a]cquire”, through lease or purchase, any property necessary to perform public broadcasting services.<sup>1</sup> All of these responsibilities are intended to allow the Authority to pursue its mission as a public broadcaster for the residents of New Jersey.

Currently, the Authority operates four full power television transmitters, six low power TV translators, and seven radio transmitters, all located in various areas around the State. While the Network is a member of the PBS network for television and the NPR network for radio, it also produces and broadcasts much of its own programming. NJN is mostly

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<sup>1</sup> See N.J.S.A. 48:23-7.

known for its public affairs broadcasts and is one of only two states that produce a nightly news program dedicated to its state's activities. NJN has been recognized with numerous awards, including 369 Regional Emmy nominations and 76 Regional Emmy Awards.

## 2) Previous Attempts to Change the Authority's Structure

Throughout the Authority's 40 year existence, there have been numerous plans to explore other business models for NJN. In 1980, the Authority's Executive Director proposed the creation of a New Jersey public broadcast corporation. A bill was subsequently introduced in the Legislature to create the public broadcast corporation. The bill, supported by Governor Byrne, was passed overwhelmingly by both Houses of the Legislature. However, Governor Byrne conditionally vetoed the legislation to allow incoming Governor Kean to consider its merits. Under the new administration, the idea did not receive further consideration.

In 1986, the Senate Legislative Oversight Committee issued a "Report on the Purpose and Organization of the New Jersey Public Broadcasting Authority." The report provided draft legislation that repealed the New Jersey Public Broadcasting Act of 1968 and reconstituted the Authority as the New Jersey Public Broadcasting Corporation.

In 1994, Governor Whitman indicated that the State should sever its ties with the Authority. In a budget address to the Legislature, Governor Whitman stated that "government ownership of the media went out with Pravda."

In 2005, the 21st Century Task Force was created to address the authority's financial, organizational and operational challenges and to make short-term and long-term recommendations to address NJN's future. In its report, the 21st Century Task Force recommended that NJN should remain a State agency, but be granted greater autonomy in the areas of: (1) procurement of capital equipment to replace aging infrastructure; (2) employee recruitment and retention; and (3) development and application of new technologies. The issues in the report were never acted upon; however, as a result of Governor Jon Corzine's proposal to cut the Network's budget by \$1.6 million (to \$4.3 million) for Fiscal Year 2009, the 21st Century Task Force's recommendations were altered to embrace a plan that would transfer the noncommercial licenses to its Foundation, which would continue the original mission of the Network. This plan was never acted upon.

## 3) Current Status of the Network

As previously stated, the structure of the Authority has been questioned numerous times over the past several decades. Even though a restructuring of the Authority has not previously taken hold, the Task Force believes that a dramatic reconfiguration of the Authority should occur.

First and foremost, NJN has experienced a dramatic decrease in direct State aid throughout the last decade. In Fiscal Year 2001, NJN received approximately \$8.4



million in direct State funding, compared to approximately \$4 million in Fiscal Year 2010. The steady decline in direct State aid is compounded by the recently-completed transition from an analog format to a digital format, a process that cost \$20 million for the Network to complete. The federally mandated digital conversion was required for all commercial and noncommercial television broadcasting entities.

The federal government believes that the transition to digital transmission will make available currently used frequencies for expanded public safety communications, as well as provide a more efficient transmission technology. The newly available frequencies are to be used for advanced commercial wireless services.

In addition to depleting the Network's budget, the switch to digital transmission is one of the many technological advances that have dramatically changed how Americans receive information. Most notably, the Internet increased the capability of wireless technology and enabled individuals to receive information in real-time.

All of the aforementioned factors have impeded the Network's capability to adapt to technological innovations, expand its programming and partnerships and compete with other public media outlets for a limited number of members. Although these problems may not necessarily be limited to NJN, policymakers must confront these issues to ensure success going forward.

#### 4) The Creation of this Task Force

On March 16, 2010, Governor Christie stated in his budget address that the State would eliminate funding for the Authority for the 2011 fiscal year. The Governor's budget indicated that the Authority should transition from a State-run media organization into an independent not-for-profit organization and no longer operate NJN.

Out of concern that NJN would be quickly dismantled and that the future of any new not-for-profit organization operating a public media entity in New Jersey could be jeopardized by this process, a compromise was negotiated to permit NJN to continue operating until January 1, 2011. As such, the Authority's operating budget for Fiscal Year 2011 is \$1.89 million, which includes \$1.7 million for salaries and wages, \$19,000 for materials and supplies, \$112,000 for services, and \$40,000 for maintenance and fixed charges.

The FY '11 budget represents a cut of \$2 million, or a reduction of 51.5 percent, from the previous fiscal year direct appropriation and is less than the \$2.5 million that the Authority received from the State in direct aid in 1970. The current funding will only allow the Network to operate until November 1, 2010.

Additionally, the Legislature passed Senate Concurrent Resolution No. 113, establishing the Legislative Task Force on Public Broadcasting. The Concurrent Resolution mandated that the Task Force:



study...evaluate, and develop recommendations relating to, a proposal to transfer the assets, including operating licenses, and operations of the New Jersey Public Broadcasting Authority...to an independent, not-for-profit organization .

The Task Force was given until October 15, 2010, or a little over 100 days, to issue a report detailing its findings.

### III. SYNOPSIS OF THE TASK FORCE REVIEW PROCESS

Following the appointment of the 10 legislative members, the Task Force held its first conference call. During the call, the Task Force decided to hold three public hearings throughout the State. Each hearing would allow the Task Force to transparently collect information from experts, stakeholders, NJN employees and the public.

The three public hearings took place over a 10 day period – the first hearing was held on September 14 at the State House in Trenton; the second, on September 16 at the Lakeside Lodge at Stockton College in Pomona; and the final hearing on September 23 at the Montclair Municipal Building in Montclair. In order to allow the Task Force members to focus on specific areas of concern, the public hearings were arranged around three major topics, respectively: “An Overview of the New Jersey Network,” “Workforce and Labor Issues,” and “Public Media Programming, NJN’s Assets and Related Issues.”

In all, the Task Force listened to more than ten hours of testimony and received hundreds of pages of written testimony from the general public.

#### 1) The State House – September 14, 2010

The Task Force’s focus at their first meeting was to learn about the history of NJN and the future of public media in the State. In order for the Task Force to better understand the challenges facing NJN, the hearing also examined national trends in public media and how new modes of communication have impacted public media.

The Task Force heard from the Chair of the Public Broadcasting Authority, the Chair of the NJN Foundation and the Acting Executive Director, who all spoke at length about the Network’s rich history and the recent difficulties. The Task Force also heard from members of the public including a representative of the Local 1032 of the Communications Workers of America (“CWA”), the union that represents the majority of NJN employees, and Network employees, who spoke about public broadcasting in other states and argued that New Jersey’s geographic uniqueness make it imperative for the State to maintain its status as the owner and operator of the Network; and representatives from the environment and civic affairs communities, who discussed various concerns related to transferring ownership.

The Task Force also received testimony discussing several different plans for the future of NJN. While these plans varied, everyone agreed that changes must be made to NJN's current structure in order for the State to maintain a New Jersey-centric public media outlet. While each plan had worth, all lacked the specific information needed to realistically transition the current television-focused outlet to a multi-media platform that engages the community.

Finally, the Task Force took testimony from a law professor, who is an expert in media and public broadcasting, and the author of a recent report on public broadcasting in New Jersey. Both concluded that the State should not continue to operate NJN.

2) Stockton College – September 16, 2010

During its second meeting, the Task Force discussed the current staffing structure at the Network along with the needs of a workforce in public media. The Task Force also took testimony on the vision for the future workforce of a NJ-centric media entity. The location was particularly noteworthy because Stockton College is home to one of the Network's facilities.

Representatives of the CWA testified about the existing collective bargaining agreement with the State. Additionally, the Task Force learned about successful state-operated public media entities, and the conversion of Hawaii's state-owned public broadcasting network to a nonprofit corporation, which is widely considered to be a failure because of the fast-paced nature of the station's transition. A proposal, which is modeled after the original 21st Century Task Force and would maintain the Network's status as a State-owned and operated entity but with increased autonomy and flexibility and was drafted by the NJN staff was presented in detail. The Task Force also received testimony on the Network's existing fundraising efforts.

3) Montclair Municipal Building – September 23, 2010

At its final public meeting, the Task Force received testimony on public media programming and services provided by NJN, as well as the value of any assets owned or operated by the Authority. The Task Force also used this meeting to resolve unanswered questions, and hear from NJN employees and members of the public who were unable to attend one of the other two meetings.

The Task Force members learned about various NJN-produced educational, cultural and arts programs. Former and current Network employees discussed NJN partnerships, including its role in the Latino community; its creation of the New Jersey Works program with the State Department of Labor and Workforce Development; and its production of content used by Channel 9, WWOR, in Secaucus. Many members of the public also testified regarding their concern about the potential loss of New Jersey-centric programming.

In addition to these public meetings, members of the Task Force met individually with various stakeholders; reviewed countless written submissions; held conference calls with experts in public media and law; and participated in discussions with various leaders at other public broadcasting entities. The Task Force studied existing radio, television and multi-media models and reviewed information on transfers and mergers of public media entities within the past twenty years. To understand all of the functions that NJN performs as a service to New Jersey residents, the Task Force members received assistance from multiple departments throughout the State, including the State's Office of Emergency Management, which among its many other responsibilities operates the Emergency Alert System that is broadcast on NJN, and the Governor's policy office, which provided members with basic documentation concerning the Authority's assets, leases and employees.

It is under this background that the Task Force adopts the following findings.

#### IV. FINDINGS

##### 1) The State should not operate a public media outlet

Based upon the testimony the Task Force received, the Task Force believes that in today's fast-paced, technological media environment, it is clear that the State should not operate a public broadcasting entity.

##### a) Existing State law hinders Network operations

The Task Force finds that the Authority cannot continue to function successfully under its current structure. However, this statement is not a reflection on the employees of the Authority. The Task Force applauds the Network employees for maintaining and expanding on NJN's history of excellent broadcasting. For example:

- Willie Sanchez's production of *Su Salud Primero/Your Health First*. Mr. Sanchez's work, which won a Mid-Atlantic Emmy for Outstanding Community Service, provided content not only a television production but also for the Network's bilingual Web site;
- the development of a partnership with the Salem County Cultural and Heritage Commission to produce a cellphone tour of Underground Railroad sites in the county; and
- the touching documentary *Decoding Autism*, which was produced with funding from private donors. NJN also created an interactive web page on the Network's site that provides facts about autism as well as where to find additional resources.

This small sampling of outstanding programming demonstrates the staff's commitment to public and civic engagement. The Task Force understands that these accomplishments

were received despite the inability of both the State and the management of the Authority to adapt to the rapidly-changing face of public media.

Notwithstanding NJN's engaging programs and partnerships, their focus primarily on television was to the detriment of their radio station and other, newly-expanding mediums. This decision has resulted in an entity that cannot continue without a large State subsidy. As noted above, television viewership continues to decline. A typical *NJN News* broadcast, which airs at 6:00 p.m. and is rebroadcast throughout the next 24 hours, has approximately 20,000 viewers. Other original programming suffers from limited viewers as well: approximately 10,000 homes watch *Due Process* and approximately 5,000 homes watch *State of the Arts*. Only 40,000 people watched the various airings of the Governor's budget address on March 16, 2010.

This Task Force does not pass judgment on the quality - or importance - of these programs. But the Task Force believes that merely running these programs on television is insufficient to sustain a public media outlet in today's world. The Internet, which is becoming a main communication and information link, is underutilized by the Network. In fact, NJN's website receives only 35,000 unique visitors per month. And the Network's social media presence is small, with a mere 73 followers and only cursory background information on one of the main social media sites. Without a commanding presence in this burgeoning area, the Network will not be able to expand its reach and flourish in the new public media world.

It is clear that the current structure serves as an impediment to NJN's future as a potential leader in public media. The Task Force identified several major obstacles that lead to this conclusion:

1. A decrease in State funding

Since 1990, direct appropriations from the State have decreased from \$8.9 million in 1990 to \$4 million in 2010. For the 2011 fiscal year, which runs from July 1, 2010 to June 30, 2011, the State has reduced direct funding by 50 percent to \$2 million. The State has consistently provided additional financial support to the Authority, which covers the cost of employee payroll and benefits and expenses associated with phone lines and mail. Additionally, the State built the Network's facilities in Trenton and allows the Authority to operate that building rent-free. In total, it is estimated that the State provides approximately \$16 million of the Authority's annual operating budget of \$28 million.

The decline in State funding has had a trickle-down effect and has impacted other resources that the Authority relies upon for funding. For example, in December 2009, the Authority was forced to decline a grant from the Corporation for Public Broadcasting worth approximately \$660,000 because the State did not provide the match requirement.

If the State had been historically able to provide a permanent, dedicated source of funding, the Authority presumably would have had more flexibility in tough economic

times. However, the reality is that the Authority has been cash starved for years and, under the current Administration, there is no will to continue funding due to the severe economic challenges confronting the State. No public media entity could survive with such a large, uncertain funding source.

## 2. Staffing issues

There are two distinct issues that fall under the umbrella of “staffing.” First, the Governor’s Office historically approves all hiring, which is not only a tedious process, but it also does not allow the Authority to maintain the independence necessary for journalistic integrity.

Second, the majority of NJN employees fall under the State’s collective bargaining process. This means that the employees and the Authority are subject to civil service rules and a collective bargaining process that is not designed for such a specialized field. The majority of Network employees are unclassified and these employees are not well-served in trying to navigate a system designed for “classified,” or traditional civil service/career service, employees. Many of NJN’s employees are confined to their title and unable to bridge, or promote, to the other titles. The existing State system, which can be successful for “traditional” State employees, has served as an impediment to a public media entity.<sup>2</sup>

## 3. An inflexible procurement process

As with most State agencies, any purchase made by the Authority must comply with the State’s procurement process. Purchase orders must be generated for each and every item and, depending on the potential cost of the item, individualized policies ranging from a telephone quotation procedure to a rigid public bidding process must be followed. Additionally, State law imposes specific requirements on various aspects of contracting and specific types of contracts.

For any broadcasting entity to be successful, that entity must be able to quickly take advantage of the newest technology, but that entity must also make cost-benefit decisions based on the price of new technology compared to the needs of the entity. The system currently employed by the State reduces any decisions to a layered approval process that hinders the creative development necessary to move a public media entity forward.

All of these factors have resulted in a slow-moving machine operating in a dynamic and ever-changing environment. The most obvious example of the difficulty in operating a public media entity under the burdens of the State was heard at the third public meeting, by Michael Aron, who serves as both the Acting News Director and Senior Political

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<sup>2</sup> The Task Force specifically rejects any implication that the employees are unable or unwilling to perform the work required to maintain the Network. To the contrary, the Network’s employees have trained themselves not only on new technology required within their specific job description, for example a new, state-of-the-art master control system, but they have also learned new jobs in order to fulfill needs at the Network that have resulted from staff attrition.

Correspondent. Mr. Aron explained that State rules require the Governor's approval of all travel requests. As a result, Mr. Aron recently submitted a travel request to the Governor's Office to cover the Governor's political campaigning trip to Iowa. Not only does that process require that a member of the New Jersey press corps receive permission from the Governor to travel to an event to cover the Governor's activities – but, just as importantly, it also effectively shuts out New Jersey residents from receiving New Jersey news from a local source.

b) Improvements cannot be made to the existing structure

In making the determination that improvements cannot be made to the existing structure of the Authority, the Task Force reviewed numerous examples of public media outlets, examining entities that are both government-owned and non-profits. After reviewing all of this information, the Task Force concluded that improvements cannot be made to the existing State structure that would satisfy the needs of a public media entity.

Other states have relatively successful operations that run almost solely on State funding. Maryland's public broadcasting entity, known as "MPT," is an agency within the State's Education Department that collaborates with a private, nonprofit 501(c)(3) corporation, the MPT Foundation, to provide financial support through grants, donations and an endowment. MPT, however, is a full PBS member, meaning it has the rights to the whole PBS National Program Service and does not have to play programs on a delay. Additionally, education is at the core of MPT's mission, while NJN has a focus on public affairs and culture. Also, MPT only broadcasts on television, while NJN operates both television and radio licensees.

When researching transitions from state-funded to nonprofit organizations, Oregon is the most-widely cited success story. Oregon's conversion began nearly 20 years ago, in a completely different economic environment. The separation took nearly a decade to complete and the State provided support throughout the transition. Oregon Public Broadcasting (OPB) provides television, radio, internet, news and jazz services and is now the most watched public broadcaster in the United States. In addition to OPB's major private partnerships, the station is supported by 120,000 individual contributors. Earlier this month, OPB was chosen as a lead station in a nationwide CPB-initiative to build local journalism centers in seven regions across the country focusing on environmental coverage.

The Task Force also reviewed smaller nonprofits and partnerships that have achieved success in recent years. Ideastream, based in the Cleveland, Ohio area, was discussed at several Task Force hearings. Ideastream has three principles: 1) every project must be run on multiple media platforms; 2) every project must be in partnership with another entity; and 3) every project stems from community research. These overriding principles have enabled the entity to provide programs that reach the community, based on the community's needs and in a medium that the community wants.



Of course, all of these entities are distinct from NJN. Ideastream, for example, serves northeast Ohio, a smaller geographic area than New Jersey. Similarly, while Oregon Public Broadcasting services most of the state, the population is much smaller than New Jersey. However, these models demonstrate that success can be achieved with innovative thinking, diverse partnerships and minimal State involvement.

Finally, we are mindful that this conclusion is in opposition to the Hughes Commission's conclusion from 40 years ago. The Hughes Commission did review the potential for a partnership of noncommercial entities, but rejected that approach because of the belief that there would be technical and fiscal inefficiencies and overlap. Interestingly, when the Commission advocated for the creation of the Authority, it was less concerned with the organizational structure and most concerned with the idea that the Authority "should be designed and maintained in a manner that will permit it to respond and promote" the State's public interest. Unfortunately, the Commission's vision is not served under the Network's current structure.

2) The State must continue to commit to NJN's mission

The Task Force's conclusion that the State should not operate a public media entity does not mean that the State should not invest in public media. To the contrary, the Task Force believes that despite the budgetary crisis, the residents of New Jersey expect the State to provide some funding for public media, whether it is direct state funding, a dedicated educational or cultural grant, the continuation of existing service contracts or in-kind use of the State's infrastructure.

In fact, approximately 95 percent of public broadcasting entities receive some type of state funding. For example:

- Twin Cities Public Television (TPT), a nonprofit organization that runs 4 digital television channels and is widely considered one of the best public media organizations in the nation, receive annual grants from the State to fund arts and culture programming; in 2009, this grant represented approximately 2 percent of TPT's annual revenue;
- Ideastream, a nonprofit dedicated to serving northeast Ohio, manages two political and government affairs services and also works with another nonprofit to provide audiovisual and Web access to statehouse events and Supreme Court proceedings. The programs were established and funded by State and allowed Ideastream to wire and install permanent cameras throughout the legislative buildings.

As the State moves the Network to a nonprofit entity, by a sale, transfer or lease, the State must provide transitional support. Without some assistance, a future entity will inevitably fail.

3) The transition to a new entity can not be accomplished in the current



timeframe.

The Governor's first public statement on the potential transfer of the Public Broadcasting Authority to a non-profit was during his budget address on March 16, 2010 when he declared that the State "does not need its own television network – New Jersey Network can and will succeed as an independent not-for-profit, and we should free it to pursue that path." The Governor's proposed budget indicated that "in fiscal year 2011, the Public Broadcasting Authority will transition from a State-run media organization to an independent not-for-profit" and the proposed budget "assumes that NJN will operate independently and New Jersey will no longer be in the public television business as of January 2011." The final budget that became law, codified in the Fiscal Year 2011 Appropriations Act, reduced direct State funding to the Authority by 50 percent.

The Governor's statements that the State will not financially support or operate the Authority were the impetus for the Legislature to create this Task Force.

When the Legislature passed SCR113, it did so with the intention of reviewing and evaluating all of the existing proposals in order to work with the Governor to make a determination how best to serve the public. However, based on information received by the Task Force, it is clear that this process cannot be accomplished before January 1, 2011.<sup>3</sup>

The Task Force encountered numerous issues that could serve as potential roadblocks to an effective transfer of operations to another entity. Without describing every impediment standing in the way of a January 1, 2011 turnover, the Task Force highlights the following noteworthy tasks that need to be accomplished in order to effectuate any transfer:

a) Federal Communications Commission involvement

The Authority operates four television licenses and eight radio state licenses. In order to continue operating these licenses, any entity must use these licenses for noncommercial broadcasting. Any transfer of licenses must be approved by the Federal Communications Commission ("FCC"). It is unclear whether this Administration has initiated contact with the FCC to begin this potentially time consuming process. In fact, the Task Force acknowledges that such contact would be premature until a plan for the transfer of the licenses has been agreed upon by the interested parties.

Both the radio and television licenses present unique difficulties, which will be discussed briefly below.

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<sup>3</sup> According to the minutes from a public meeting of the New Jersey Public Broadcasting Board of Commissioners on July 28, 2010, a representative from the Department of the Treasury indicated "that moving forward there has to be some form of bridge loan or funding that has to be in place so that NJN is able to prosper and not fall apart six months later." Nonetheless, the Task Force understands that direct State funding will only be sufficient through November 1, 2010, and the Administration has made no public comment regarding continued funding for the Authority.

1) Radio

New Jersey has a collection of relatively weak frequencies that are not viable as individual stations. Because of this fact, the exact value of these licenses is unclear. The Administration recently awarded a contract to evaluate the value of the radio assets, but it is not known when the evaluation will be completed.

The Task Force would like to note that while radio has been available for nearly 100 years, the medium is currently experiencing resurgence in popularity. Because so many New Jerseyans spend time in the car commuting to and from work, radio will continue to play an important part in our daily lives.

2) Television

Because there is a strong demand for television spectrum that is not actively in use, the FCC may determine that the Authority's spectrum should be reallocated for non-broadcast purposes, such as mobile broadband. Although many recent transfers have been accomplished without this consideration, if the FCC does claw back unused spectrum and auction it for noncommercial use, it could allow some of the current operators to receive a portion of the auction proceeds. There is insufficient information today to fully understand the potential value of the spectrum; therefore, the Task Force finds that the entity in charge of the license transfer be particularly mindful of this consideration.

The New Jersey Department of Treasury ("Treasury") has issued a request for proposal ("RFP") to determine the potential value for the television licenses but those responses were not due until October 5 and a contract to perform those services has not yet been awarded. This uncertainty makes any transfer more complicated; however, it does open broad possibilities if this asset can be monetized. It is unclear whether the Administration has factored in any potential future value for these assets due to the ongoing FCC investigation regarding the reallocation of television spectrum.

b) CPB funding

The Corporation for Public Broadcasting ("CPB") provides funding to noncommercial broadcasters in order to facilitate the development of, and ensure universal access to, non-commercial high-quality programming and telecommunications services. Any change in State appropriations would result in a decrease in CPB funding, which is set, in part, based on the proportion of non-CPB funding. In addition, CPB funding, which currently totals approximately \$2.8 million annually, is contingent upon certain programming requirements that would need to be satisfied by the new entity.

c) Existing Contracts

Any transfer to another entity would have serious implications for existing contracts between the Authority and other entities. The Authority both provides and receives

services under these agreements. For example, the Authority leases land from various colleges, universities and state entities and agencies in order to operate antenna sites. Also, the Authority is one year into a 30-year lease of unused space on its Educational Broadband Services (“EBS”) licenses<sup>4</sup> to a wireless broadband provider.

d) Services provided by NJN

The Task Force learned about many partnerships and services provided by the New Jersey Network. It is unclear whether these worthy, and in some instances, necessary, services would be impacted by any transition.

For example, NJN provides the statewide distribution for the Emergency Alert System and a secured data distribution to bi-state, federal and health agencies. Additionally, the Authority’s transmitters, which are designated as homeland security assets, contain communications equipment used by state and federal law enforcement officials as well as every mobile cell company, and several radio and television stations. Should State funding cease on January 1, 2011, it remains to be seen what entity will take over those responsibilities.

Additionally, the Task Force was made aware of at least 14 active media production contracts with various entities, including State agencies, which will continue into 2011. NJN could lose nearly \$700,000 in payments as a result of any hasty termination, in addition to any potential litigation that could result from unfulfilled contract agreements.

4) Any transfer should be conditioned on certain goals/principles

The Task Force is aware that any transfer or sale of assets must be accomplished in a transparent and unrestricted contract negotiation. Therefore, we offer three main principles to assist future decision-makers in evaluating which entity is best equipped to maintain NJN’s strong tradition without imposing unconstitutional or untenable mandates as a condition of transfer:

The Task Force believes that it is fundamental for a new entity to:

- Provide New Jersey-Centric Programming – The Task Force is very much aware that there can not be any condition regarding programming during the transfer of licenses. However, the Task Force believes that the new entity must ensure that it protects the original mission of NJN. The Task Force suggests the following sample language for the inclusion in any transfer agreement in which the successor nonprofit entity enters: The new entity “shall operate the Television and Radio licenses in accordance with all legal requirements and provisions of the Certificate of Incorporation as a not-for-profit enterprise dedicated to serving the cultural, educational and civic needs of the residents of New Jersey”;

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<sup>4</sup> The Treasurer issued two separate RFPs in September seeking to lease extra space on two additional licenses that have never been leased.

- Operate Statewide – The Task Force believes that the new entity must continue to provide service statewide. A statewide presence will not only maintain the current mission of NJN but is also crucial to the survival of any new public media entity in New Jersey; and
- Engage new technology and provide independent, civic journalism.

To quote from written testimony the Task Force received, the “New Jersey Network is not a television business. It is a public service.” Although the Task Force understands that certain business decisions must be made, however, the decision makers must also be mindful that their final goal is to provide New Jersey residents with a public service.

In order to effectuate the transfer of all television and radio licenses, in accordance with the facts laid out in this report, the Legislature must grant specific authority to an entity that will then negotiate the license transfer from the NJPBA to a new public media outlet.

There are currently statutory constructions in place to ensure inter-branch cooperation when major determinations, such as this, are undergoing review, for example, the State House Commission and the State Leasing and Space Utilization Committee.

Thus, the Task Force has determined that it is in the best interest of the people of this State that the Legislature and the Executive Branch work together to finalize the transfer.

## V. CONCLUSION

The Task Force concludes that the State can no longer operate a public media outlet; however, existing statute does not authorize any governmental body to inventory the Authority’s assets, negotiate with Federal entities, and receive, negotiate and approve any proposal to transfer the State’s television and radio licenses.

Therefore, the Task Force determines that legislation must first be enacted to provide an entity with the power to inventory the Authority’s assets, negotiate with Federal entities, and receive, negotiate and approve any proposal to transfer the State’s television and radio licenses.

The newly authorized body must also determine what entity, or entities, is best equipped to take over New Jersey's main source of public media. In so doing, there must be an evaluation of what entity is best able to provide New Jersey-centric programming; operate Statewide; avail itself of new technology; and provide independent, civic journalism.

Despite the many challenges ahead, the Task Force, similar to the Hughes Commission created more than 40 years ago, is optimistic about the future of public media in New Jersey. The Task Force believes that a structural change to the Network will result in a more innovative, diverse, flexible organization that best serves the residents of the State.

