



Federal Communications Commission
Washington, D.C. 20554

February 16, 2018

DA 18-157

Small Entity Compliance Guide

Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations

FCC 17-41
MB Docket No. 12-106
Released April 20, 2017

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—to comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decisions regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties and damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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TTY: 1-888-TELL-FCC (1-888-835-5322)
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TABLE OF CONTENTS

I.	OBJECTIVES OF THE PROCEEDING	1
II.	COMPLIANCE REQUIREMENTS	1
III.	RECORDKEEPING AND REPORTING REQUIREMENTS	3
IV.	IMPLEMENTATION DATE	3
V.	INTERNET LINKS	4

I. OBJECTIVES OF THE PROCEEDING

Under the Commission's longstanding rules, noncommercial educational (NCE) broadcast stations were prohibited, absent a waiver granted by the Commission, from conducting on-air fundraising that interrupts regular programming for third-party non-profit organizations (hereafter, "third-party fundraising"). These rules reflected the concern that any promotional or fundraising activities by NCE stations must not adversely affect the educational programming mission or noncommercial character of these stations. The Commission previously has granted waivers of these rules only in extraordinary circumstances to permit fundraising for disasters and other singular catastrophic events, such as hurricanes and tornadoes. In the *Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations* Report and Order in MB Docket No. 12-106,¹ the Commission relaxed the longstanding third-party fundraising restrictions to allow NCE stations, on a voluntary basis, to conduct limited on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations. The Commission found that relaxing the third-party fundraising restrictions will benefit the public interest by enabling NCE stations to support charities and other non-profit organizations in their fundraising efforts for worthy causes. Third-party fundraising programs may also enhance the educational nature of NCE stations by raising public awareness about the social needs and charitable causes supported by non-profit organizations.

II. COMPLIANCE REQUIREMENTS

A. Relaxation of Third-Party Fundraising Restrictions (47 CFR §§ 73.503(e) & 73.621(f))

- NCE stations are allowed to conduct limited on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations.
- NCE stations conducting fundraising activities for the benefit of third-party non-profit organizations can alter or suspend regular programming – including program-length fundraising activities – at their discretion, as long as the fundraising programs do not exceed the annual one-percent cap discussed below in Section II. C.

Exemption from Third-Party Fundraising Rule for CPB-Funded NCE Stations (47 CFR §§ 73.503(e)(3) & 73.621(f)(3))

- The revised rules exempt all NCE stations that receive funding from the Corporation for Public Broadcasting (CPB) from the new rule authorizing NCE stations to conduct third-party fundraising. This exemption addresses concerns raised by some NCE stations that the new rule may pose challenges for those stations that have no interest in participating in third-party fundraising.

Waivers

- The Commission has retained its existing waiver process to allow NCE stations to seek waivers to conduct time-limited on-air fundraising for specific disasters and other singular catastrophic events, such as hurricanes and tornadoes.

¹ *In the Matter of Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations*, Report and Order, 32 FCC Red 3411 (2017).

- CPB-funded stations that are exempt from the new rule authorizing third-party fundraising are still permitted to conduct third-party fundraising for disaster relief efforts by seeking a waiver, just as they have done in the past.
- Non-exempt stations may also use the waiver process if they wish to conduct third-party fundraising beyond the one-percent annual limit. This approach will ensure that if a disaster occurs after a non-exempt station reaches its one-percent annual limit, the station will still be able to seek a waiver to raise funds on-air to support disaster relief efforts.

B. Limitations on Eligible Beneficiaries of Third-Party Fundraising (*Report & Order para. 13*)

- NCE stations may conduct third-party fundraising only for entities that are recognized as tax exempt, non-profit organizations under Section 501(c)(3) of the Internal Revenue Code. This limitation on eligible beneficiaries will provide NCE stations and their audiences assurances that the third-party organizations that benefit from on-air fundraising are *bona fide* non-profit groups.

C. Annual Limit on Third-Party Fundraising (47 CFR § 73.503(f))

- NCE stations may spend up to one percent of their total annual airtime conducting third-party fundraising. A one-percent annual limit averages to approximately 88 hours per year for stations on the air 24 hours a day. This limit provides NCE stations sufficient flexibility to conduct third-party fundraising, while also ensuring that they do not frustrate their audiences with excessive fundraising appeals or divert their focus from their primary mission of providing educational programming to their communities.

D. Audience Disclosures (47 CFR §§ 73.503(e)(1) & 73.621(f)(1))

- NCE stations that conduct third-party fundraising are required to air audience disclosures that clearly state that the fundraiser is not for the benefit of the station itself and identify the non-profit organization intended to benefit from the fundraising.
- Such disclosures must be made at the beginning and the end of the fundraising program and at least once during each hour of the program. Audience disclosures will help to avoid possible confusion on the part of station audiences as to who the fundraising program is intended to benefit, particularly where there is an affiliation between an NCE station and the non-profit organization for which the fundraising is being conducted.

E. Reimbursement of Expenses Associated with Third-Party Fundraising (47 CFR §§ 73.503(e)(2) & 73.621(f)(2))

- NCE stations are permitted to accept reimbursement of expenses they incur in conducting third-party fundraising, such as the costs of producing third-party programming and the station's operating costs in connection with the broadcast of third-party fundraising programming.
- NCE stations are not permitted to accept additional consideration in exchange for conducting or airing third-party fundraising programs. Allowing NCE stations to accept additional consideration could create the perception that NCE stations are engaging in

commercial activity and airing programming akin to advertising, which could undermine their noncommercial, educational mission.

F. Public File Requirement (47 CFR §73.3527(e)(14))

- NCE stations that participate in third-party fundraising are required to include certain information about their fundraising activities in their public inspection files.
- For each third-party fundraising program or activity it conducts, a NCE station must place in its public file, on a quarterly basis, the following information:
 - the date, time, and duration of the fundraiser;
 - the type of fundraising activity;
 - the name of the non-profit organization benefitted by the fundraiser;
 - a brief description of the specific cause or project, if any, supported by the fundraiser; and,
 - to the extent that the NCE station participated in tallying or receiving any funds for the non-profit group, an approximation, to the nearest \$10,000, of the total funds raised.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Report and Order* contains new recordkeeping requirements for information on third-party fundraising activities that NCE stations must keep in their public file.

- Every three months NCE stations that interrupt regular programming to conduct fundraising activities on behalf of a third-party non-profit organization pursuant to § 73.503(e) (FM stations) or § 73.621(f) (television stations), must place in their public file the information detailed above in Section II.F.
- NCE stations that are subject to the public file requirement must have the information for each calendar quarter in their public file by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.).

IV. IMPLEMENTATION DATE

The following rules in the *Report and Order* became effective July 5, 2017, sixty (60) days after publication of the text or summary thereof in the Federal Register: 47 CFR § 73.503(d) & (e)(2)-(3), Note to 47 CFR § 73.503 and 47 CFR § 73.621(e) & (f)(2)-(3).

The following rules in the *Report and Order* required approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act: 47 CFR § 73.503(e)(1), 47 CFR § 73.621(f)(1), and 47 CFR § 73.3527(e)(14). These rules became effective November 13, 2017, pursuant to the notice the Commission published on September 12, 2017, in the Federal Register announcing OMB approval and the effective date.

V. INTERNET LINKS

A copy of the *Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations*, Report and Order is available at:

https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-41A1.docx (Word);
https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-41A1.pdf (Acrobat).

A copy of the Federal Register Summary of the *Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations*, Report and Order is available at:

<https://www.gpo.gov/fdsys/pkg/FR-2017-05-05/pdf/2017-09002.pdf#page=1>.

A copy of the Federal Register publication announcing OMB approval of the information collection and the effective date of the associated rules is available at:

<https://www.gpo.gov/fdsys/pkg/FR-2017-09-12/pdf/2017-19218.pdf>.