

FCC FACT SHEET*

Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations
Report and Order - MB Docket No. 12-106

Background: Under the FCC's current rules, noncommercial educational (NCE) TV and radio stations are not permitted to conduct on-air fundraising that alters or suspends the station's regular programming, unless the fundraising is for the station itself. Fundraising that would benefit a third-party non-profit organization, and would alter or suspend regular programming, is not allowed. In certain cases, the Commission has issued waivers to allow NCE stations to engage in such fundraising, such as for Hurricane Katrina and Haiti relief efforts. And in 2012, the FCC started a proceeding to consider whether to change its rules to permit NCE stations to conduct additional on-air third-party fundraising.

Relaxing the FCC's third-party fundraising restrictions would enable NCE stations to support disaster relief groups, charities and other non-profit organizations in their fundraising efforts for worthy causes. Third-party fundraising programs may also help to raise public awareness about important topics, such as poverty, health care, and humanitarian issues.

What the Order Would Do:

- Allow NCE stations to conduct third-party fundraising that alters or suspends regular programming as long as stations do not spend more than one percent of their total annual airtime on such activities;
- Exempt NCE stations that receive funding from the Corporation for Public Broadcasting (CPB) from the rule authorizing NCE stations to conduct third-party fundraising absent a waiver granted by the FCC;
- Allow only organizations recognized as tax exempt, non-profit organizations under Section 501(c)(3) of the Internal Revenue Code to benefit from NCE third-party fundraising;
- Require NCE stations that conduct third-party fundraising to air audience disclosures;
- Allow NCE stations to be reimbursed for expenses incurred in conducting third-party fundraising, but prohibit NCE stations from receiving "additional consideration"; and
- Require NCE stations to include certain information relating to their third-party fundraising activities in their public files.

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Noncommercial Educational Station Fundraising) MB Docket No. 12-106
for Third-Party Non-Profit Organizations)

REPORT AND ORDER*

Adopted: []

Released: []

By the Commission:

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I. INTRODUCTION

1. In this Report and Order, we revise our rules to allow noncommercial educational (NCE) broadcast stations to conduct limited on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations (hereafter, "third-party fundraising"). Relaxing our longstanding third-party fundraising restrictions will serve 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 help to raise public awareness about important topics, such as poverty, health care, and humanitarian issues. We conclude that permitting NCE stations to conduct

* This document has been circulated for tentative consideration by the Commission at its April open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration by the Commission, the public interest would be served by making this document publicly available. The FCC's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

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third-party fundraising on a limited basis as set forth below will not undermine the noncommercial nature of NCE stations or their primary function of serving their communities of license through educational programming.¹

II. BACKGROUND

2. Under Section 399B of the Communications Act of 1934, as amended (Act), NCE stations are prohibited from broadcasting “advertisements,” defined as

any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended—

- (1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;
- (2) to express the views of any person with respect to any matter of public importance or interest; or
- (3) to support or oppose any candidate for political office.²

Further, pursuant to Sections 73.503(d) and 73.621(e) of the Commission’s rules, an NCE station may not conduct fundraising activities that substantially alter or suspend regular programming and are designed to benefit any entity other than the station itself.³ “Regular programming” includes programming that “the public broadcaster ordinarily carries, but does not encompass those fundraising activities that suspend or alter their normal programming fare.”⁴ The third-party fundraising restrictions reflect the concern that

¹ 47 CFR §§ 73.503(a) (“A noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.”), 73.621(a) (“Except as provided in paragraph (b) of this section, noncommercial educational broadcast stations will be licensed only to nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service.”).

² 47 U.S.C. § 399B. NCE stations are already permitted to conduct some fundraising activities on behalf of third-party non-profit organizations where such fundraising activities do not interrupt regular programming. *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 907, para. 20 (1982) (*1982 Policy Statement*). For example, such stations may broadcast brief announcements which directly or indirectly raise funds for non-profit organizations “‘at the beginning and end of programs[,] ... between identifiable segments of a longer program’ or, in the absence of identifiable segments, in programming during ‘station breaks,’ such that the flow of programming is not ‘unduly disrupted.’” *Id.* at 902, para. 12, and 907, para. 20. The *Notice of Proposed Rulemaking (NPRM)* in this proceeding provided extensive background on the history of the Commission’s policies and rules governing the broadcast of promotional announcements and fundraising activities by NCE stations, which we incorporate by reference and do not repeat here. *Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations*, Notice of Proposed Rulemaking, 27 FCC Rcd 4515, 4516-18, paras. 2-6 (2012) (*NPRM*).

³ 47 CFR §§ 73.503(d) and Note, 73.621(e) and Note; *1982 Policy Statement*, 90 FCC 2d at 907, para. 20 (“[P]ublic broadcasters are generally prohibited from engaging in fundraising activities on behalf of any entity other than the licensee where such activities substantially alter or suspend regular programming.”), *recon. granted*, Memorandum Opinion and Order, 97 FCC 2d 255, 264-65, paras. 19-20 (1984) (*Reconsideration Order*) (“In the absence of a waiver, noncommercial stations are prohibited from conducting any fundraising activity which substantially alters or suspends regular programming and [is] designed to raise support for any entity other than the station itself.”). NCE stations are permitted to interrupt regular programming to conduct fundraising for their own operations. *Reconsideration Order*, 97 FCC 2d at 264-65, paras. 19-20.

⁴ *Reconsideration Order*, 97 FCC 2d at 264, para. 18. See also *Chicago Educational Television Association*, Letter Order, 10 FCC Rcd 12018, 12019 (MMB 1995) (finding that a scheduled broadcast of a fundraising holiday gift exchange did not constitute regular programming because it would not ordinarily be carried by the station). As noted above, NCE stations are permitted to conduct some fundraising activities on behalf of third-party non-profit organizations where such fundraising activities do not interrupt regular programming. *1982 Policy Statement*, 90 FCC Rcd at 907, para. 20. An NCE station currently may not air a fundraising program intended to benefit a third-

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“educational stations are licensed to provide a noncommercial broadcast service, not to serve as a fund-raising operation for other entities by broadcasting material that is ‘akin to regular advertising.’”⁵

3. The Commission has granted waivers of Sections 73.503(d) and 73.621(e) in extraordinary circumstances. For example, in 1992, the former Mass Media Bureau granted a waiver of Sections 73.503(d) and 73.621(e) to the licensee of an NCE radio station and an NCE television station in West Palm Beach, Florida, following Hurricane Andrew.⁶ The stations proposed to broadcast a two-hour simulcast along with four area commercial television stations to raise funds and donations and provide information for the hurricane relief effort.⁷ The staff granted the waiver in recognition of the catastrophic events that had occurred, the stations’ unique ability to serve the area affected by the disaster, and the limited length of the program.⁸ The Commission also has granted waivers to permit fundraising for other singular catastrophic events, such as Hurricanes Katrina and Sandy, the September 11, 2001 terrorist attacks, the January 2005 tsunami in Southeast Asia, and the January 2010 earthquake in Haiti.⁹ More recently, the Commission established informal procedures through which NCE licensees could request Commission approval to conduct fundraising to aid the Moore, Oklahoma area tornado relief efforts, noting that it has granted waivers of Section 73.503(d) for “fundraising appeals to support relief efforts following disasters of particular uniqueness or magnitude” and that such waivers “have been issued for a specific fundraising program or programs, or for sustained station appeals for periods which generally do not exceed several days.”¹⁰ In contrast, Commission staff has denied waiver requests where the proposed fundraising occurred annually to address ongoing needs and was not limited to a specific one-time problem.¹¹

4. In June 2011, a working group including Commission staff, scholars, and consultants released the *INC Report*, a comprehensive report on the state of the media landscape.¹² The *INC Report*

party non-profit organization as “regular programming.” See *Media Bureau Announces Procedures for Obtaining Commission Approval for NCE Station Fundraising to Aid Oklahoma Tornado Relief Efforts*, Public Notice, 28 FCC Rcd 7461 (MB 2013) (*Oklahoma Tornado Relief Waiver PN*) (noting that the Media Bureau has issued waivers to permit “a specific fundraising program or programs” on behalf of an entity other than the NCE station itself).

⁵ *Ohio State Univ.*, Letter Order, 62 FCC 2d 449, 450 (1976) (quoting *Noncommercial Educational Stations*, 26 FCC 2d 339, 343, paras. 18-19 (1970)). See also *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, First Report and Order, 69 FCC 2d 200, 226, para. 52 (1978):

[W]e adhere to our view that broadcast of such matter is inconsistent with the noncommercial nature of educational broadcasting. Furthermore, we believe that the devotion of programming time to raising money by on-the-air auctions for charitable or other organizations does not serve the purposes for which noncommercial educational broadcasting was established. The only plausible justification for permitting auctions for the benefit of others is that the station would retain a substantial portion of the revenue. However, even this justification is unpersuasive in view of the large amount of broadcast time licensees already devote to fund-raising. Simply put, noncommercial educational broadcasting is the wrong vehicle for general fund-raising by auctions and the only reason an exception is made on behalf of licensees is to aid in their efforts to provide the programming which they were licensed to broadcast.

⁶ *South Florida Telecommunications Foundation, Inc.*, Letter Order, 7 FCC Rcd 5634 (MMB 1992).

⁷ *Id.* at 5634.

⁸ *Id.*

⁹ *Oklahoma Tornado Relief Waiver PN*, 28 FCC Rcd 7461.

¹⁰ *Id.*

¹¹ *E.g.*, *Karsten Amlie*, Letter Order, 10 FCC Rcd 9763 (MMB 1995) (denying a request for waiver of Section 73.503(d) to permit an NCE station to conduct on-air fundraising for the Muscular Dystrophy Association).

¹² Steve Waldman & the Working Group on *Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, at 356 (June 2011) (*INC Report*), <https://www.fcc.gov/general/information-needs-communities>. As noted in the *INC Report*, the report was drafted by an informal working group, and the views of the report “do

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discussed both the need to empower citizens to ensure that broadcasters serve their communities in exchange for the use of public spectrum and the need to remove unnecessary burdens on broadcasters who aim to serve their communities. Citing comments from the National Religious Broadcasters (NRB),¹³ the *INC Report* recommended that the Commission consider affording noncommercial broadcasters more flexibility by allowing NCE stations that are not grantees of the CPB to spend up to one percent of their annual airtime doing fundraising for charities and other third-party non-profit organizations.¹⁴ In order to be eligible for CPB funding, an NCE station would have to devote the substantial majority of its daily total programming hours broadcast on all of its channels to CPB-qualified programming, which is defined as “general audience programming that serves demonstrated community needs of an educational, informational and cultural nature.”¹⁵ The *INC Report* noted that “[i]n some cases having local charities on the air can be a useful way of informing residents about problems in their communities” and “can help [NCE] stations achieve their public service or religious missions.”¹⁶

5. On April 25, 2012, in response to the recommendations in the *INC Report*, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on whether to allow NCE stations to conduct third-party fundraising.¹⁷ The Commission received 23 comments and seven replies. NRB and all of the religious broadcasters that filed comments favor allowing NCE stations to conduct third-party fundraising.¹⁸ Commenters representing secular NCE broadcasters, including National Public

not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices.” *Id.* at 362.

¹³ In 2008, prior to proposing the relaxation of the prohibition on third-party fundraising by NCE stations in its comments in the *Future of Media* proceeding, NRB informally requested that the Commission modify its policy regarding fundraising by NCE stations to permit NCE stations to engage in limited fundraising for Section 501(c)(3) non-profit organizations without having to obtain a waiver from the Commission. See Memorandum from Craig Parshall, Senior Vice President and General Counsel, NRB, to the Federal Communications Commission, at 2 (filed October 15, 2008) (NRB Memorandum), <https://ecfsapi.fcc.gov/file/7021989079.pdf>. NRB argued that allowing NCEs to raise funds for non-profit organizations, unlike fundraising on behalf of for-profit organizations, would serve the public interest. *Id.* at 2.

¹⁴ *INC Report* at 356.

¹⁵ Corporation for Public Broadcasting, *FY2016 Radio Community Service Grant General Provisions & Eligibility Criteria*, at 5 (Oct. 2015) (*Radio CSG General Provisions & Eligibility Criteria*), <http://www.cpb.org/files/stations/radio/generalprovisions/FY-2016-Radio-General-Provisions.pdf>; Corporation for Public Broadcasting, *FY2016 Television Community Service Grant General Provisions & Eligibility Criteria*, at 5 (Oct. 2015) (*Television CSG General Provisions & Eligibility Criteria*), <http://www.cpb.org/files/stations/tv/generalprovisions/FY-2016-TV-General-Provisions.pdf>. Programs that “further the principles of particular . . . religious philosophies” are not considered CPB-qualified programming. *Radio CSG General Provisions & Eligibility Criteria* at 5; *Television CSG General Provisions & Eligibility Criteria* at 5. Campus stations managed and operated by and for students, stations licensed to political organizations, and stations that provide in-service training programming to licensee employees, clients, or representatives are also ineligible for CPB funding. *Radio CSG General Provisions & Eligibility Criteria* at 8; *Television CSG General Provisions & Eligibility Criteria* at 8.

¹⁶ *INC Report* at 356.

¹⁷ *NPRM*, 27 FCC Rcd at 4515, para. 1.

¹⁸ Calvary Chapel of Costa Mesa, Inc. Comments at 1 (CCCMI); Columbia Bible College Broadcasting Company Comments at 1-2 (CBCBC); Good Life Broadcasting Comments at 3 (GLB); Houston Christian Broadcasters, Inc., The Sister Sherry Lynn Foundation, Inc. and The Hammock Educational and Environmental Community Services Association Comments (Joint Parties) at 2-3; Moody Bible Institute of Chicago Comments at 2-3 (Moody); Community Educational Television, Jacksonville Educators Broadcasting, Inc., and San Antonio Community Educational TV, Inc. Comments at 2 (NCTV Licensees); NRB Comments at 3, 8; Northwestern College Comments at 2 (NWC). In addition, one non-religious broadcaster supports allowing NCE stations to conduct third-party fundraising. The University of North Carolina Center for Public Television Comments at 2-3 (UNC-TV).

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Radio (NPR), Public Broadcasting Service and Association for Public Television Stations (PBS/APTS), and university and college NCE stations, oppose relaxation of the third-party fundraising restrictions.¹⁹

III. DISCUSSION

A. Relaxation of Third-Party Fundraising Restrictions

6. We relax the third-party fundraising restrictions to allow NCE stations to conduct limited on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations. Such relief will provide NCE stations greater flexibility to undertake fundraising for third-party non-profit organizations.²⁰ Under the current rules, program-length fundraising for third-party non-profit organizations is prohibited (even if regularly scheduled) because such programming is considered to suspend “regular programming.”²¹ Under the rules we adopt today, NCE stations will be able to conduct fundraising activities that alter or suspend regular programming – including program-length fundraising activities – at their discretion, as long as the fundraising programs do not exceed the one-percent cap discussed below.²² We conclude that providing NCE stations the flexibility to engage in limited fundraising for charities and other third-party non-profit organizations will benefit the public interest. Third-party fundraising programs may enhance the educational nature of NCE stations by educating the public about the social needs and charitable causes supported by non-profit organizations.²³ For example, a fundraising program for a breast cancer charity could help to educate the station’s audience about early detection and support services,²⁴ and a fundraising program for a child poverty relief organization could serve to educate the stations’ listeners about the needs of children around the world who suffer in extreme poverty.²⁵ Non-profit organizations may be better able to address their charitable missions with the financial support received from the NCE stations’ audiences.²⁶ Some of this financial

¹⁹ National Public Radio Comments at 3 (NPR); Nevada Public Radio Comments at 1 (Nevada); New England Public Radio Comments at 2-3 (NEPR); Northern Kentucky University Comments at 1 (NKU); Public Broadcasting Service and Association of Public Television Stations Comments at 8-9 (PBS/APTS); REC Networks Comments at 1-2 (REC); Station Resource Group Comments at 1 (SRG); University Station Alliance Comments at 2 (USA); Chuck Miller Comments at 1 (Miller); National Lawyers Guild Committee on Democratic Communications and Media Alliance Reply at 3 (NLG Committee); Prometheus Radio Project Reply at 1 (Prometheus); Public Broadcasting Licensees Reply at 1-2.

²⁰ NRB Memorandum at 1 (stating that conducting fundraising for non-profits without “substantially” altering regular programming in violation of the current rules is “ineffective and surrounded by uncertainty as to the permissible frequency and length of [fundraising] spots”).

²¹ *See supra* para. 2. Additionally, regularly scheduled fundraising programs are not eligible for waiver under the current waiver policy, under which the Commission has granted waivers for one-time fundraisers responding to extraordinary events. *See supra* para. 3.

²² *See supra* para. 3.

²³ CCCMI Comments at 2; CBCBC Comments at 1; Joint Parties Comments at 2-3; Moody Comments at 2; NRB Comments at 3, 8. NEPR asserts that NCE stations have stronger, more direct ways of informing their audiences of local needs and issues and achieving their public service mission, such as through news reports and documentaries. NEPR Comments at 6. However, as NRB explains, third-party fundraising will supplement, not substitute for, these other news and informational programs by focusing on the missions of specific non-profit groups and will also provide the stations’ audiences, if they choose, the opportunity to support those missions financially. NRB Reply at 8-9.

²⁴ Joint Parties Comments at 3; Moody Comments at 3.

²⁵ CBCBC Comments at 1-2.

²⁶ GLB Comments at 3; Joint Parties Comments at 2-3; Moody Comments at 2-3; NRB Comments at 9; UNC-TV Comments at 2-3; NWC Comments at 2.

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support may directly benefit NCE stations' local communities.²⁷ Third-party fundraising may also help to lessen the financial burden on governmental entities that address social needs through appropriations from public funds.²⁸

7. We further conclude that allowing NCE stations to conduct limited third-party fundraising will not undermine the noncommercial broadcasting service, as suggested by some commenters.²⁹ We believe that the concerns underlying the longstanding third-party fundraising restrictions – that any promotional or fundraising activities by NCE stations must not adversely affect the educational programming mission or noncommercial character of these stations – are still relevant today. Nevertheless, we conclude that a blanket prohibition on third-party fundraising that interrupts regular programming is no longer necessary to preserve NCE stations' noncommercial nature and ensure that NCE stations remain focused on their primary function of providing educational programming to their communities of license. The Commission's experience in granting waivers to allow NCE stations to conduct fundraising for disaster relief efforts has demonstrated that NCE stations can conduct limited third-party fundraising without compromising their noncommercial nature and the valuable program service they provide to the public.³⁰ The public has responded enthusiastically to these disaster relief fundraising activities,³¹ and there is no evidence in the record before us that these fundraising activities have altered the public's perception of noncommercial broadcasting. Accordingly, we find that it is appropriate to allow NCE stations to conduct third-party fundraising on a limited basis as set forth in this Order.

8. We disagree with assertions that the success of the existing waiver process demonstrates that changes to the rules are unnecessary.³² As discussed above, we have determined that the public

²⁷ GLB Comments at 3; Joint Parties Comments at 2-3; Moody Comments at 2-3; UNC-TV Comments at 3; NWC Comments at 2. As discussed below, we are not limiting eligible beneficiaries of third-party fundraising to local non-profit organizations, but we expect that NCE stations may be highly motivated to raise funds for non-profit organizations that support their local communities. *See infra* para. 16.

²⁸ NCTV Licensees Comments at 2; NRB Comments at 9.

²⁹ NPR Comments at 3-7; Nevada Comments at 1-2; NEPR Comments at 2-3; NKU Comments at 1; PBS/APTS Comments at 8-9; USA Comments at 1-2; Miller Comments at 1-2; NLG Committee Reply at 3-4; NPR Reply at 3; Prometheus Reply at 1-2; Public Broadcasting Licensees Reply at 1-5.

³⁰ GLB Comments at 3 (stating that NCE licensees that have been granted such waivers "have proven that the concepts of third-party fundraising and providing a noncommercial service are not mutually exclusive but rather are entirely compatible."); Joint Parties Comments at 2-3; Moody Comments at 2-3. *See supra* para. 3.

³¹ *See, e.g., INC Report* at 317 (WMIT-FM, Asheville, North Carolina, raised \$272,250 in on-air fundraiser in February 2010 for Haiti relief efforts); Matthew Lasar, *KPFA Raises \$130,000 for Haiti Relief*, Radio Survivor (Jan. 21, 2010), <http://www.radiosurvivor.com/2010/01/21/kpfa-raises-130000-for-haitian-relief/> (KPFA, Berkeley, California, set one-day fundraising record by raising \$130,000 for Haiti relief efforts); *10 Years Ago, KMVR Listeners Set Donation Record to Katrina Victims*, KMVR.org, <http://www.kvmr.org/news/10-years-ago-kvmr-listeners-set-donation-record-katrina-victims> (last visited Feb. 13, 2017) (KMVR, Nevada City, California, set one-day fundraising record by raising \$60,000 for Hurricane Katrina relief efforts); *Odds and Ends – The Funny Unusual and Amazing*, RMPBS.org, <http://www.rmpbs.org/volunteer/sam/funny-unusual-and-amazing/> (last visited Feb. 13, 2017) (Rocky Mountain PBS hosted a one-hour telethon which raised \$578,000 for Hurricane Katrina relief efforts).

³² NKU Comments at 1; NPR Comments at 4; Nevada Comments at 1; SRG Comments at 1; USA Comments at 1; Loren Dobson *et al.* Comments at 4 (Dobson); Miller Comments at 1; NPR Reply at 2; Public Broadcasting Licensees Reply at 3; Letter from Gregory A. Lewis, Acting General Counsel and Acting Vice President, Legal & Business Affairs, National Public Radio, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-106 (filed May 9, 2014), at 1. As explained below, we are retaining the existing waiver process to address requests by NCE stations to conduct on-air fundraising for disasters and other singular catastrophic events for cases in which CPB-funded stations would like to air such fundraising or any NCE broadcaster wishes to devote more than one percent of its total annual airtime to such events. *See infra* para. 20.

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interest will be served by relaxing our third-party fundraising restrictions to allow NCE stations to conduct limited third-party fundraising activities unrelated to relief efforts for singular catastrophic events. The waiver process is intended to provide relief in extraordinary circumstances,³³ and is not suitable for the more routine third-party fundraising activities that we address in this proceeding. We likewise reject proposals that we expand the existing waiver process to allow NCE stations to seek waivers to conduct third-party fundraising activities that are not connected to specific disasters.³⁴ We think that it would impose an unnecessary burden on both NCE licensees and Commission staff to require NCE licensees to seek waivers each time they want to conduct such routine third-party fundraising.

9. We are also not persuaded by arguments that relaxing the third-party fundraising restrictions will adversely affect the noncommercial broadcasting service by reducing the amount of airtime dedicated to educational, instructional, and cultural programming;³⁵ lessening the appeal of NCE stations to their audiences;³⁶ or jeopardizing fundraising for NCE stations' own operations.³⁷ First and foremost, we emphasize that the choice to conduct third-party fundraising will be entirely voluntary on the part of NCE stations. NCE stations that do not wish to engage in third-party fundraising are not required to do so. Thus, NCE stations concerned that airing third-party fundraising programs will jeopardize fundraising for their own operations can simply choose not to engage in such third-party fundraising.³⁸ Additionally, we have determined that third-party fundraising programs may enhance the educational nature of NCE stations in some situations by raising public awareness about social needs and charitable causes supported by non-profit organizations. Further, as we explain below, we are limiting the amount of time that NCE stations can spend on third-party fundraising that interrupts regular programming to one percent of their total annual airtime.³⁹ We believe that the one-percent annual limit strikes the proper balance between providing NCE stations some flexibility to support their fundraising missions and ensuring that their third-party fundraising activities do not take away from their primary function of providing noncommercial, educational programming to their local communities.

10. We disagree with assertions that third-party fundraising will change the public's perception of noncommercial broadcasting by causing the public to view the "business" of NCE stations as charitable fundraising, which could harm all NCE stations, even those that do not change their on-air practices.⁴⁰ NCE stations that choose to engage in third-party fundraising will continue to spend the vast majority of their time—at least 99%, if not more—providing noncommercial, educational programming to their audiences. We do not believe that allowing NCE stations to allot up to one percent of their total annual airtime to third-party fundraising will significantly alter the public's perception of noncommercial broadcasting. Nor do we believe that third-party fundraising will weaken the public's confidence in the editorial independence of NCE stations or increase the potential for third-party organizations to influence programming decisions.⁴¹ As NRB points out, NCE stations are already permitted to air sponsorship and

³³ See *supra* para. 3.

³⁴ PBS/APTS Comments at 11; REC Comments at 1; Public Broadcasting Licensees Reply at 6.

³⁵ NLG Committee Reply at 3.

³⁶ NPR Comments at 7; Nevada Comments at 1; USA Comments at 2; Miller Comments at 1; NLG Committee Reply at 3-4.

³⁷ NPR Comments at 6-7; Nevada Comments at 1; USA Comments at 2; Miller Comments at 1; NLG Committee Reply at 7; NPR Reply at 3; Prometheus Reply at 2; Public Broadcasting Licensees Reply at 4-5.

³⁸ We note, moreover, that there is currently no time limitation on NCE stations' ability to conduct fundraising for themselves, and that this has not adversely affected the noncommercial nature of public broadcasting.

³⁹ See *infra* paras. 18-19.

⁴⁰ NEPR Comments at 2; Prometheus Reply at 1.

⁴¹ NEPR Comments at 2-3; PBS/APTS Comments at 4-5, 8-9; NPR Reply at 3; Prometheus Reply at 2.

underwriting announcements from both non-profit groups and commercial businesses.⁴² Commenters have offered no evidence that such promotional announcements have eroded the public's confidence in the editorial independence of NCE stations.

11. Some commenters assert that relaxation of the third-party fundraising restrictions will subject NCE stations to undue pressure from affiliated or influential parties – such as universities, colleges, and other institutions that hold the stations' licenses,⁴³ politically powerful persons, and foundations that provide underwriting contributions to stations – that may seek to use the station to raise funds for their own discrete interests,⁴⁴ or cause NCE stations to be inundated with fundraising requests from local non-profits.⁴⁵ To the extent that these commenters raise concerns that a university, college, or other institutional licensee may apply pressure to its licensed station to engage in third-party fundraising, we note that NCE stations can take steps to preempt unwanted fundraising requests from licensees and other non-profit organizations by, for example, announcing publicly their reasons for not airing routine third-party fundraising drives.

12. ***Exemption from Third-Party Fundraising Rule for CPB-Funded NCE Stations.*** Although we conclude that the public interest will be served by providing NCE stations the flexibility to conduct third-party fundraising, we recognize that some NCE stations claim that this new fundraising latitude may pose challenges for those stations that have no interest in participating in third-party fundraising. The record reflects that most NCE stations that oppose third-party fundraising are CPB-funded stations. Indeed, all but one CPB-funded station that filed comments opposed relaxation of the rule.⁴⁶ Accordingly, because CPB-funded stations generally do not want this added flexibility, we are exempting all CPB-funded NCE stations from the new rule authorizing NCE stations to conduct on-air fundraising for third-party non-profit organizations that interrupts regular programming. To the extent that any individual CPB-funded NCE stations would like to avail themselves of the general rule authorizing third-party fundraising, the Commission will entertain requests for waiver of this exemption.⁴⁷

B. Limitations on Eligible Beneficiaries of Third-Party Fundraising

13. We limit the class of entities for which NCE stations may conduct third-party fundraising to entities that are recognized as tax exempt, non-profit organizations under Section 501(c)(3) of the Internal Revenue Code.⁴⁸ Section 501(c)(3) exempts from federal income taxes corporations, foundations, or other organizations that are organized and operated exclusively for religious, charitable, scientific, educational, or certain other purposes, where no part of the net earnings of the organization

⁴² NRB Reply at 7. See 47 U.S.C. § 399B; 47 CFR §§ 73.503(d), 73.621(e); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Public Notice, 7 FCC Rcd 827, 827-28 (1992); *Reconsideration Order*, 97 FCC 2d at 262-63, para. 13; *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Second Report and Order, 86 FCC 2d 141 (1981).

⁴³ As noted above, NCE stations are permitted to interrupt regular programming to conduct fundraising for their own operations. *Reconsideration Order*, 97 FCC 2d at 264-65, paras. 19-20. Fundraising on behalf of an NCE licensee is not considered the same as fundraising for the station itself because the licensee may have holdings or interests besides the station for which it may use the funds.

⁴⁴ NPR Comments at 6; Nevada Comments at 1; NEPR Comments at 3; REC Comments at 1; USA Comments at 2; Miller Comments at 1; NLG Committee Reply Comments at 5-6; Public Broadcasting Licensees Reply at 4.

⁴⁵ NPR Comments at 5; Nevada Comments at 1; NEPR Comments at 3-4; USA Comments at 1; Miller Comments at 1; NPR Reply at 3; Public Broadcasting Licensees Reply at 3-4.

⁴⁶ UNC-TV, a CPB-funded station, filed comments supporting relaxation of the third-party fundraising restrictions.

⁴⁷ To the extent UNC-TV (or any other CPB-funded NCE station) would like to avail itself of the same opportunity to fundraise for third-party non-profit organizations, it may file a request for waiver of this exemption.

⁴⁸ 26 U.S.C. § 501(c)(3).

inures to the benefit of any private shareholder or individual.⁴⁹ NRB and other commenters overwhelmingly support limiting eligibility for third-party fundraising to Section 501(c)(3) organizations.⁵⁰ We agree with commenters that this limitation will provide NCE stations certainty that third-party organizations that benefit from on-air fundraising are *bona fide* non-profits.⁵¹

14. Two commenters suggest that NCE stations should be allowed to undertake fundraising for any organization that has qualified as a *bona fide* non-profit organization in any State or pursuant to any section of the Internal Revenue Code relating to non-profit organizations.⁵² These commenters assert that not all *bona fide* non-profit organizations choose to apply to be certified as tax exempt under the Internal Revenue Code and that there are many *bona fide* non-profit, tax exempt organizations, such as veterans organizations and civic leagues, that are not qualified under Section 501(c)(3), but are covered under other sections of the Internal Revenue Code.⁵³ We acknowledge that there are many *bona fide* non-profit organizations that are not qualified as tax exempt, non-profit organizations under Section 501(c)(3). Nevertheless, we conclude that it is appropriate to limit eligibility for third-party fundraising under our rules to Section 501(c)(3) organizations. We think it would be unworkable to have the laws of 50 different States governing the types of non-profit organizations that may be the beneficiaries of third-party fundraising.

15. Moreover, unlike non-profit organizations certified under other sections of the Internal Revenue Code, Section 501(c)(3) organizations are strictly prohibited from supporting or opposing candidates for political office and are subject to limits on lobbying.⁵⁴ Thus, limiting eligible beneficiaries to Section 501(c)(3) organizations dovetails well with Section 399B's prohibition on paid political advertising on NCE stations.⁵⁵ This prohibition reflects Congress's concern that paid political advertising could alter the unique noncommercial, educational nature of public broadcasting.⁵⁶ We are similarly concerned that allowing NCE stations to raise funds for non-profit organizations that support or oppose political candidates or spend a substantial part of their time engaged in lobbying activities could alter the noncommercial, educational nature of NCE stations, particularly where the funds raised through an NCE station's fundraising efforts are used for political purposes.⁵⁷ We are also concerned that an NCE

⁴⁹ *Id.*

⁵⁰ NRB Comments at 12-13, 21; CCCMI Comments at 3; GLB Comments at 3; NWC Comments at 2; PCI Comments at 7; NEPR Comments at 4-5.

⁵¹ CCCMI Comments at 3; GLB Comments at 3; NWC Comments at 2. Commenters also note that donors may be more inclined to give if they know their donation is tax deductible. CCCMI Comments at 3; GLB Comments at 3.

⁵² Joint Parties Comments at 5; Moody Comments at 4.

⁵³ Joint Parties Comments at 5; Moody Comments at 4.

⁵⁴ 26 U.S.C. § 501(c)(3).

⁵⁵ 47 U.S.C. § 339B.

⁵⁶ *Minority Television Project, Inc. v. FCC*, 736 F.3d 1192, 1202 (9th Cir. 2013) (en banc), *cert. denied*, 134 S.Ct. 2874 (2014) ("The primary harm § 339b sought to prevent was the loss of the distinctive content of public broadcast programming.") (*Minority Television*). We note that, at the time the *NPRM* was released, the Ninth Circuit Court of Appeals had recently struck down as unconstitutional Section 399B's prohibitions on public interest and political advertisements by NCE stations. *Minority Television Project, Inc. v. FCC*, 676 F.3d 869, 881 (9th Cir. 2012). The Commission stated in the *NPRM* that it would not enforce Section 399B's bans on public interest and political advertisements in the Ninth Circuit once the court's mandate went into effect. *NPRM*, 27 FCC Rcd at 4522, para. 13. The following year, however, the Ninth Circuit issued an *en banc* decision upholding those provisions of the statute as constitutional and the United States Supreme Court subsequently denied certiorari. *Minority Television*, 736 F.3d at 1200. Accordingly, we will continue to enforce Section 399B's prohibitions on public interest and political advertisements.

⁵⁷ NPR Reply at 4 (arguing that allowing fundraising for non-profit organizations certified under sections of the Internal Revenue Code other than Section 501(c)(3) would present the possibility of NCE stations using airtime to

(continued....)

station's audience may perceive the station's efforts to raise funds for such an organization as a tacit endorsement of that organization's views, which could alter the public's perception of noncommercial broadcasting. Therefore, we conclude that it is appropriate to limit the eligible beneficiaries of third-party fundraising to Section 501(c)(3) organizations.

16. We will not limit eligible beneficiaries of third-party fundraising to local non-profit organizations. The Commission sought comment in the *NPRM* on whether it would further localism to limit NCE stations to soliciting donations for local non-profit organizations.⁵⁸ After reviewing the comments, however, we are not convinced that localism would benefit significantly from such a limitation. Several commenters point out that there are many national non-profit organizations (some of which have local chapters and some of which do not) that provide critical support to local communities.⁵⁹ Educational Media Foundation (EMF) notes, in this regard, that a disaster that directly impacts the audience of an NCE station may be best addressed by a national organization that does not have a local chapter in the community of license.⁶⁰ Further, we agree with commenters that it may be difficult to distinguish between "local" and "non-local" organizations where, for example, a non-profit organization has local, national, and international components.⁶¹ Additionally, commenters observe that limiting eligible beneficiaries to local non-profit organizations may ignore the preferences of NCE station audiences.⁶² NWC states that it conducted a survey of its listener advisory panels in five of its markets to solicit feedback on how the panel members feel about providing financial aid to less fortunate individuals facing difficult circumstances both at home and abroad.⁶³ Over 65% of the 1,200 respondents indicated that they want to be informed about the needs of poor people regardless of where they live, over 44% indicated that they are willing to respond financially to help worthy causes both in the United States and internationally, and 26% indicated that awareness of problems in other countries make them more likely to help those in their own communities.⁶⁴ Accordingly, we will afford NCE stations the discretion to raise funds for both local and non-local non-profit organizations. While we are not limiting the beneficiaries of third-party fundraising to local non-profit groups, we note that many NCE stations already have relationships with non-profit groups in their local communities and we expect that NCE stations may be highly motivated to support local non-profits.⁶⁵

raise funds for "Super PACs" and political and advocacy-focused trade associations, which could fundamentally alter not only the nature of noncommercial broadcasting, but also the public perception of the service). *See also* NRB Comments at 21 ("NRB's proposal is that only 501(c)(3) non-profit organizations be permitted to benefit from the subject rule change. This will effectively eliminate the need to determine questions about 'remuneration' regarding political advertisements, because any activities by 501(c)(3) non-profits which endorse candidates for political office are expressly prohibited by the Internal Revenue Code.").

⁵⁸ *NPRM*, 27 FCC Rcd at 4520-21, para. 10 (seeking comment on whether it would further localism to limit NCE stations to soliciting donations for local non-profit organizations).

⁵⁹ GLB Comments at 4; NRB Comments at 15; NWC Comments at 2; UNC-TV Comments at 4.

⁶⁰ EMF Comments at 4.

⁶¹ GLB Comments at 4; NRB Comments at 15-16; UNC-TV Comments at 4; NWC Comments at 2.

⁶² EMF Comments at 4-5; NRB Comments at 16; NWC Comments at 4.

⁶³ NWC Comments at 4. NWC states that it surveyed its listener advisory panels in Minneapolis, Minnesota; Madison, Wisconsin; Waterloo, Iowa; Des Moines, Iowa; and Fargo, North Dakota. *Id.*

⁶⁴ *Id.* *See also* EMF Comments at 4-5 (noting that audiences of religious or educational NCE stations may have an affinity for the work of a particular charity that provides services nationally or internationally).

⁶⁵ *See* CCCMI Comments at 3 ("Allowing NCE stations to partner with non-local entities also does not mean that those stations will only partner with non-local entities."); NRB Comments at 16 ("NRB member stations that will most likely utilize third-party fundraising, as well as the non-profit groups they will likely want to promote, all share a mission-minded approach that is both local in the desire to identify and meet community needs, yet global in the desire to minister to similar needs around the world."); UNC-TV Comments at 2-3 ("UNC-TV is the only television

(continued....)

17. We also decline to limit eligible beneficiaries of an NCE station's third-party fundraising to non-profit organizations that are unaffiliated with the station. The *NPRM* asked for comment on whether to limit fundraising on behalf of third parties to unaffiliated third parties, given that third-party fundraising on behalf of affiliated entities may restrict an NCE station's ability to conduct fundraising for local non-profit organizations.⁶⁶ As discussed above, we have determined that it will not significantly further localism to limit NCE stations to fundraising for local non-profit organizations.⁶⁷ Thus, we think it is unnecessary to limit third-party fundraising to unaffiliated entities to ensure that NCE stations are able to fundraise for local non-profit groups.⁶⁸

C. Annual Limit on Third-Party Fundraising

18. We will allow NCE broadcasters to spend up to one percent of their total annual airtime conducting third-party fundraising. NRB asserts that a one-percent annual limit provides adequate flexibility to NCE stations, explaining that NCE licensees "will be reluctant to frustrate their audiences with excessive or demanding appeals for third-party non-profits, particularly when their own stations rely on donations from their [audiences] in order to operate."⁶⁹ We agree with NRB and other commenters that a one-percent annual limit will strike an appropriate balance between allowing NCE stations the flexibility to support the fundraising efforts of third-party non-profit organizations and ensuring that third-party fundraising does not undermine the noncommercial nature of the participating stations and divert them from their primary function of providing educational programming to their communities of license.⁷⁰ A one-percent annual limit – which equates to approximately 88 hours annually or 1.7 hours weekly for stations on the air 24 hours a day – will afford NCE stations flexibility to conduct third-party fundraising, while also ensuring that NCE stations do not frustrate their audiences with excessive fundraising appeals or divert stations from primary mission of providing educational programming to their communities.⁷¹ We reject proposals that we adopt a ten-percent annual limit on third-party fundraising,⁷² or leave it entirely up to NCE stations to decide how much of their airtime to devote to third-party fundraising.⁷³ We share NPR's concern that a ten-percent annual limit would represent a significant portion of a station's annual program schedule and could further erode the distinction between NCE stations and their commercial counterparts.⁷⁴

19. We recognize that an NCE station's total annual airtime may vary slightly from year to year and that it may be difficult for some stations to determine in advance precisely how many hours they

network in North Carolina with statewide reach. Therefore, UNC-TV believes it has a responsibility to provide whatever support and service it can to its viewers when circumstances demonstrate a significant need in the state.").

⁶⁶ *NPRM*, 27 FCC Rcd at 4521, para. 10.

⁶⁷ *See supra* para. 16.

⁶⁸ *See also supra* para. 11 (addressing concerns that relaxing the third-party fundraising restrictions will subject NCE stations to undue pressure from affiliated or influential parties).

⁶⁹ NRB Comments at 18.

⁷⁰ CCCMI Comments at 2; NRB Comments at 18; NWC Comments at 5.

⁷¹ CCCMI Comments at 2; NRB Comments at 18; NWC Comments at 5. We caution that fundraising programs for third-party non-profit organizations do not constitute "regular programming." *See supra* para. 2 (citing our rules that state that NCEs cannot engage in third-party fundraising where such activities "substantially alter or suspend regular programming"). In other words, the third-party fundraising programming permitted by this Order will count towards an NCE station's one-percent annual limit.

⁷² GLB Comments at 5; Joint Parties Comments at 5; Moody Comments at 5.

⁷³ NCTV Licensees Comments at 6; UNC-TV Comments at 6.

⁷⁴ NPR Reply at 5.

(continued...)

will operate in a given year.⁷⁵ Therefore, as suggested by NRB, we will allow NCE stations that engage in third-party fundraising to use the prior year's total airtime for purposes of determining how many hours constitute one percent of their total annual airtime.⁷⁶ For example, an NCE station that wishes to devote one percent of its airtime in 2017 to third-party fundraising may use its total annual airtime for 2016 in calculating the one percent cap. Furthermore, with respect to NCE stations that multicast programming on two or more separate channels, we will apply the one-percent annual limit separately to each individual programming stream.⁷⁷ Thus, an NCE station with three programming streams may spend up to one percent of the total annual airtime of each stream airing third-party fundraising programming on that stream. We will not, however, allow NCE stations with multiple programming streams to aggregate their total hours of programming from all of their streams and allocate their fundraising activity between and among streams or on a single program stream at their discretion, as proposed by one commenter.⁷⁸ As discussed above, we believe that the one-percent annual limit is important to ensuring that third-party fundraising activities do not undermine the noncommercial character of NCE stations, and including more fundraising on a particular stream would undermine that goal.

20. We will retain our long-standing waiver process for on-air fundraising for disasters and other singular catastrophic events, such as hurricanes and tornadoes,⁷⁹ as suggested by commenters.⁸⁰ Since such events occur only rarely, it will not burden Commission staff to retain the waiver process for purposes of such events.⁸¹ Retention of the waiver process will also enable CPB-funded stations that are exempt from the new rule authorizing NCE stations to conduct routine fundraising for third-party non-profit organizations to continue to conduct third-party fundraising for disaster relief efforts by seeking a waiver.⁸² Those stations that are not exempt from the new rule authorizing routine third-party fundraising may engage in such singular fundraising efforts (assuming they otherwise meet the criteria for third-party fundraising) without seeking a waiver, unless they do not want to include these extraordinary fundraising efforts within their one-percent limit. This approach will ensure that if a disaster occurs after a non-exempt station reaches its one-percent annual limit, the station would still be able to seek a waiver to raise funds on-air to support these efforts.⁸³

21. We decline to adopt any general limits on the duration of a specific fundraising program or on a discrete fundraising effort. We think it is unlikely that NCE licensees will risk alienating their audiences by interrupting their regular programming for an extended duration to conduct third-party fundraising.⁸⁴ Thus, we find it is unnecessary to adopt durational limits on such fundraising programs.

⁷⁵ Noncommercial educational AM and TV stations are not required to operate on a regular schedule and no minimum hours of operation are specified. 47 CFR § 73.1470(b). Noncommercial educational FM stations are required to operate at least 36 hours per week, except that stations licensed to educational institutions are not required to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods. *Id.* § 73.561(a).

⁷⁶ NRB Comments at 18.

⁷⁷ CCCMI Comments at 3; GLB Comments at 5-6.

⁷⁸ UNC-TV Comments at 6.

⁷⁹ *See supra* para. 3.

⁸⁰ NEPR Comments at 5; NRB Comments at 17; NWC Comments at 5.

⁸¹ NRB Comments at 17; NWC Comments at 5.

⁸² *See supra* para. 12.

⁸³ NWC Comments at 5.

⁸⁴ GLB Comments at 6 (noting that audiences will be motivated to notify licensees if they are using too much airtime for third-party fundraising and licensees will be motivated to listen to their audiences on the issue of duration of fundraising and can tweak or modify their practices to meet audience concerns).

D. Audience Disclosures

22. We require NCE stations that interrupt regular programming to conduct third-party fundraising 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. Most commenters that address this issue support an audience disclosure requirement, acknowledging that it will decrease the likelihood of confusion on the part of station audiences as to whether the fundraising is intended to benefit the station or another entity and as to the identity of the entity for which the fundraising is being conducted.⁸⁵ Commenters offer a range of suggestions as to the details and frequency of the audience disclosures.⁸⁶ We adopt NRB's proposed approach and require that NCE stations make disclosures at the beginning and the end of the fundraising program and at least once during each hour of the program.⁸⁷ We will not require NCE stations to use any particular language in the disclosure, but the disclosure must clearly state that the fundraiser is not for the benefit of the station itself and specifically identify the non-profit organization for which the fundraising is being conducted. As NRB suggests, an NCE station may include more detailed information – such as a description of the non-profit entity and any special project or purpose for which the funds are being raised – on the station's website and invite the audience to access that information.⁸⁸

23. One commenter opposes the audience disclosure requirement, arguing that it “would seem obvious that any appeal for funds . . . will reveal the identity of the party soliciting the donation.”⁸⁹ We disagree. Given that NCE stations frequently conduct fundraising to support their own operations and programming, we believe that audience confusion could arise, particularly where there is an affiliation between an NCE station and the non-profit organization for which the fundraising is being conducted.⁹⁰ Accordingly, we conclude that an audience disclosure requirement is warranted to ensure that the beneficiary of the fundraising is clearly identified and avoid the potential for audience confusion. We further find that this audience disclosure requirement will not impose a significant burden on NCE stations as it simply requires a statement that the fundraising is not for the stations and identification of the organization that will receive the funds.

E. Reimbursement of Expenses

24. We allow NCE stations to accept reimbursement of expenses incurred in conducting third-party fundraising activities or airing third-party fundraising programs. Expenses for which reimbursement may be accepted include expenses incurred by an NCE station in producing third-party programming and the station's operating costs in connection with the broadcast of third-party fundraising

⁸⁵ GLB Comments at 7; Joint Parties Comments at 7; NRB Comments at 25; Prometheus Reply at 5; Public Communicators, Inc. Reply at 8 (PCI).

⁸⁶ GLB Comments at 7 (suggesting that the Commission should not require specific content, frequency, or placement of the disclosures); Joint Parties Comments at 7 (suggesting that the disclosure should include the name of the organization, its address, phone number, email address, web site address, if any, a contact person for more information on the entity, and any specific purpose for which funds are being raised, but that the length and frequency of disclosures and the inclusion of any additional content should be left to the discretion of the NCE licensee); NRB Comments at 25 (suggesting that the Commission should require that NCE stations make disclosures at the beginning and the end of the fundraising program and at least once during each hour of the program).

⁸⁷ NRB Comments at 25.

⁸⁸ *Id.*

⁸⁹ EMF Comments at 6.

⁹⁰ Prometheus Reply at 5 (“Depending on the nature of the programming offered by the station and the format of the fundraising it is conceivable that listeners could easily mistakenly infer that third-party fundraising was actually fundraising for the station, particularly when the station has close ties to affiliated churches or non-profit organizations.”).

programming. This is consistent with Section 399B(b)(1) of the Act, which allows “public broadcast station[s] . . . to engage in the offering of services, facilities, or products in exchange for remuneration,” except that such stations may not make their facilities available for the broadcast of any advertisements.⁹¹ We decline, however, to allow NCE stations to receive “additional consideration” in exchange for conducting or airing third-party fundraising programs.⁹² Allowing NCE stations to receive additional consideration for third-party fundraising activities could create the perception that NCE stations are engaging in commercial activity and airing programming akin to advertising,⁹³ thus undermining their noncommercial, educational mission. It also could mislead fundraising contributors, who might assume that their donations are being used exclusively to advance the mission of the fundraiser.⁹⁴ Finally, as acknowledged by NRB, our rules permit an NCE station to broadcast programming furnished by third parties only “if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee.”⁹⁵ We decline NRB’s request to create a distinction between “*regular* ‘programming’” and “*special* fundraising activities by NCE stations for a third-party non-profit group,” with the latter not subject to the prohibition on receiving additional consideration.⁹⁶ We find that the policy rationale for prohibiting additional consideration in the case of regular programming, i.e., that such consideration could undermine the noncommercial, educational character of public broadcast stations, applies equally to third party fundraising activities and programs.

F. Public File Requirement and Other Matters

25. We do not require NCE stations that participate in third-party fundraising that interrupts regular programming to submit reports to the Commission detailing their fundraising activities, but will instead require such stations to include appropriate information on their fundraising activities in their public inspection files.⁹⁷ Specifically, we require NCE stations that conduct third-party fundraising to

⁹¹ 47 U.S.C. § 399B(b)(1).

⁹² NRB Comments at 23-24 (“NCE stations will necessarily incur expenses in producing and airing fundraising appeals, and donors who regularly give to the station may redirect some of their giving away from the station and over to the third-party non-profit group. Permitting NCE stations to receive financial consideration will help them to absorb, and adjust to, these financial circumstances.”).

⁹³ NPR Reply at 5. *See supra* note 5 and accompanying text.

⁹⁴ For example, if an NCE station that conducts a pledge drive to help starving children in Africa is slated to receive a percentage of the proceeds from the drive, audience members contributing to the drive might not be aware that a portion of their contributions will be directed to the NCE station, rather than the fundraising cause.

⁹⁵ NRB Comments at 23, *citing* 47 CFR § 73.503(c). *See also* 47 CFR § 73.621. Moreover, we note that Section 399B prohibits the airing, in exchange for remuneration, of programming material intended to express views on matters of public importance or interest, also known as “issue advocacy.” 47 U.S.C. § 399B(a)(2), (b)(2). NRB acknowledges that “[s]ome aspects of issue advocacy by 501(c)(3) groups during an on-air fundraising program could surface.” NRB Comments at 21-22 (asserting, for example, that the Salvation Army could be asked about public issues surrounding the organization’s moral and religious positions, or that World Vision, an international Christian humanitarian relief organization, could receive a question about a court case in which its right to hire persons of the same faith was upheld by reviewing courts). Thus, allowing NCE stations to receive “additional consideration” for third-party fundraising activities could run afoul of Section 399B.

⁹⁶ NRB Comments at 23-24 (asserting that, unlike “regular programming” by NCE stations, third party fundraising activities should not be subject to the prohibition on receiving additional consideration).

⁹⁷ In 2012, the Commission updated its public inspection file rules by requiring television broadcasters to post their public and political files to a centralized, online database hosted by the Commission. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012). In 2016, the Commission extended its online public file requirements to certain other licensees, including radio broadcasters. *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016). NCE radio

(continued....)

place in their public files, on a quarterly basis, the following information for each third-party fundraising program or activity: 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 of the total funds raised.⁹⁸ NCE stations that do not conduct any third-party fundraising in a given quarter will not be required to include any fundraising information in their public file for that quarter. A number of commenters raised concerns that a reporting requirement would impose unnecessary burdens on NCE licensees.⁹⁹ NRB and other commenters support a public file requirement.¹⁰⁰ We conclude that the more modest approach we adopt here will provide transparency regarding NCE stations' third-party fundraising activities to the stations' audiences, while minimizing any burdens on NCE stations. We also conclude that it is unnecessary to require NCE licensees to certify compliance with the annual limit and other restrictions on third-party fundraising in their license renewal applications.

26. Additionally, we do not require NCE stations to locally produce all third-party fundraising programs and conduct all third-party fundraising activities themselves, including collecting and distributing the funds to the non-profit entity.¹⁰¹ We agree with commenters who argue that requiring NCE stations to locally produce third-party fundraising programs may be unnecessarily burdensome and inefficient.¹⁰² Further, we are not convinced that requiring local production of third-party fundraising activities is necessary to promote localism.¹⁰³ As EMF points out, fundraising is not inherently local, but instead can have a regional, national, or worldwide message and still serve the needs of local communities.¹⁰⁴ We also note that NCE stations are permitted under the Commission's rules to air

licensees are exempt from the online public file requirements until March 1, 2018, although they may begin using the online public file voluntarily prior to that date. *Id.* at 538-39, para. 28 and 543, para 42.

⁹⁸ NRB Comments at 25-26. NRB proposed that we require an indication as to the financial range in which the total funds raised would fall, rather than specific amounts, because further funds may accrue to the non-profit organization later, without the station's knowledge. *Id.* at 26. We recognize that it may be difficult for a station to provide a precise figure for the funds raised, given that some funds may accrue to the non-profit organization as a result of the station's fundraising efforts at a later date. Accordingly, we will permit NCE stations to provide an approximation, to the nearest \$10,000, of the total funds received.

⁹⁹ CCCMI Comments at 4-5; EMF Comments at 6-7; GLB Comments at 8; Joint Parties Comments at 8; Moody Comments at 7; SRG Comments at 2; NLG Committee Reply at 5.

¹⁰⁰ CBCBC Comments at 2 (stating that it has no objection to including reports on any third-party fundraising activities in its local public inspection file); NRB Comments at 26 (stating that it does not object to inclusion of a report on third-party fundraising in the station's public file); NWC Comments at 4 (suggesting a limited public file requirement in lieu of a reporting requirement).

¹⁰¹ CCCMI Comments at 4; CBCBC Comments at 2; EMF Comments at 6; GLB Comments at 6; Joint Parties Comments at 6; Moody Comments at 6; NRB Comments at 19; UNC-TV Comments at 3 (each arguing that NCE stations should not be required to locally produce third-party fundraising activities, particularly collecting and distributing funds to the non-profit organization).

¹⁰² CCCMI Comments at 4; CBCBC Comments at 2; EMF Comments at 6; NRB Comments at 19. *See also* Joint Parties Comments at 6; Moody Comments at 6 (each noting that national and international non-profit organizations generally prefer to produce their own programming to ensure that it accurately portrays their identity and mission, while local non-profit organizations generally do not have the resources to produce their own programming and would need to rely on the NCE broadcaster).

¹⁰³ *NPRM*, 27 FCC Rcd at 4521, para. 12 (seeking comment on whether requiring an NCE station to locally produce its third-party fundraising activities would promote localism).

¹⁰⁴ EMF Comments at 4.

(continued...)

programming that is not locally produced.¹⁰⁵ Indeed, the Commission has consistently found that non-locally produced programming can serve the needs of a community.¹⁰⁶ Moreover, we are unpersuaded by NPR's argument that allowing outside entities to independently produce fundraising appeals and handle the collection of funds could "fuel the perception that the station lacks editorial independence and that its airtime is being leased to the highest bidder."¹⁰⁷ As noted above, NCE stations are already permitted to air non-locally produced programming, and NPR does not suggest that the broadcast of such programming has created a perception that NCE stations lack editorial independence. We do not believe that allowing NCE stations to use up to one percent of their total annual airtime for non-locally produced third-party fundraising will cause the public to lose confidence in the stations' editorial independence.

27. Finally, we will not require NCE stations that want to participate in third-party fundraising to affirmatively "opt in" by filing a letter or notification with the Commission. We conclude that there would be little benefit to non-profit organizations from opt-in notifications, as such organizations are more likely to seek out fundraising partners based on existing relationships with NCE stations than by perusing notifications filed with the Commission.¹⁰⁸

IV. PROCEDURAL MATTERS

28. Authority. This *Report and Order* is issued pursuant to authority contained in Sections 1, 4(i), 303(r), and 399B of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 154(i), 303(r), and 399B.

29. Severability. It is our intention in adopting these rule changes that if any provision of the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

30. People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

31. Additional Information. For additional information on this proceeding, contact Kathryn

¹⁰⁵ 47 CFR § 73.503(c) ("A noncommercial educational FM broadcast 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."); 47 CFR § 73.621(d) ("A noncommercial educational television 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.").

¹⁰⁶ *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12431 n.43 (2004) ("[P]rogramming that addresses local concerns need not be produced or originated locally to qualify as 'issue-responsive' in connection with a licensee's program service obligations"), citing *Revision of Programming and Commercialization Policies*, Report and Order, 98 FCC 2d 1076, n.28 (1984) ("[T]he coverage of local issues does not necessarily have to come from locally produced programming."); *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215, 3218-19, para. 39 (1987) (finding that the Commission "can no longer presume that location alone is relevant to the provision of programming which is responsive to the interests and needs of the community" and noting that a local program origination requirement "may actually preclude the presentation of responsive programming"); *WPIX, Inc.*, Decision, 68 FCC 2d 381, 402-3, para. 11 (1978) ("premise that local needs can be met only through programming produced by a local station has not only been rejected by the Commission . . . , but it also lacks presumptive validity") (citations omitted).

¹⁰⁷ NPR Reply at 5.

¹⁰⁸ GLB Comments at 4; NRB Comments at 27.

Berthot of the Media Bureau, Policy Division, (202) 418-7454.

32. Regulatory Flexibility Act Analysis. Pursuant to the Regulatory Flexibility Act of 1980, as amended,¹⁰⁹ the Commission's Final Regulatory Flexibility Analysis of this *Report and Order* is attached as Appendix B.

33. Paperwork Reduction Act. This *Report and Order* contains either new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).¹¹⁰ It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

34. Congressional Review Act. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

35. Accordingly, **IT IS ORDERED**, pursuant to the authority contained in Sections 1, 4(i), 303(r), and 399B of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 154(i), 303(r), and 399B, that this *Report and Order* **IS ADOPTED** and our rules are amended as set forth in Appendix A. The requirements of this *Report and Order* shall become effective 60 days after the Commission's publication of a notice in the *Federal Register*, which will announce approval of portions of the rules requiring approval by OMB under the PRA.

36. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order* including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰⁹ 5 U.S.C. § 603.

¹¹⁰ Pub. L. No. 104-13.

APPENDIX A
Final Rules

The Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

2. Section 73.503 is amended by revising the last sentence of paragraph (d), adding new paragraph (e), redesignating current paragraph (e) as paragraph (f), and revising the Note to § 73.503 as follows:

§ 73.503 Licensing requirements and service.

* * * * *

(d) * * * *The scheduling of any announcements and acknowledgements may not interrupt regular programming, except as permitted under paragraph (e) of this section.*

(e) A noncommercial educational FM broadcast station may interrupt regular programming to conduct fundraising activities on behalf of a third-party non-profit organization, provided that all such fundraising activities conducted during any given year do not exceed one percent of the station's total annual airtime. A station may use the prior year's total airtime for purposes of determining how many hours constitute one percent of its total annual airtime. With respect to stations that multicast programming on two or more separate channels, the one-percent annual limit will apply separately to each individual programming stream. For purposes of this paragraph, a non-profit organization is an entity that qualifies as a non-profit organization under 26 U.S.C. 501(c)(3).

(1) *Audience Disclosure.* A noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The station must air the audience disclosure at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

(2) *Reimbursement.* A noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization may accept reimbursement of expenses incurred in conducting third-party fundraising activities or airing third-party fundraising programs.

(3) *Exemption.* No noncommercial educational FM broadcast station that receives funding from the Corporation for Public Broadcasting shall have the authority to interrupt regular programming to conduct fundraising activities on behalf of a third-party non-profit organization, absent a waiver granted by the Commission.

* * * * *

Note to § 73.503: Commission interpretation on this rule, including the acceptable form of acknowledgements, may be found in the *Second Report and Order* in Docket No. 21136 (Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations), 86 FCC 2d 141 (1981); the *Memorandum Opinion and Order* in Docket No. 21136, 90 FCC 2d 895 (1982); the

Memorandum Opinion and Order in Docket 21136, 97 FCC 2d 255 (1984); and the *Report and Order* in Docket No. 12-106 (Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations), _____ FR _____, _____. See also *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Public Notice, 7 FCC Rcd 827 (1992), which can be retrieved through the Internet at <http://www.fcc.gov/mmb/asd/nature.html>.

3. Section 73.621 is amended by revising the last sentence of paragraph (e) and the Note to paragraph (e), adding new paragraph (f), and redesignating current paragraphs (f) through (i) as paragraphs (g) through (j) as follows:

§ 73.621 Noncommercial educational TV stations.

* * * * *

(e) * * * *The scheduling of any announcements and acknowledgements may not interrupt regular programming, except as permitted under paragraph (f) of this section.*

Note: Commission interpretation of this rule, including the acceptable form of acknowledgements, may be found in the Second Report and Order in Docket No. 21136 (Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations), 86 F.C.C. 2d 141 (1981); the Memorandum Opinion and Order in Docket No. 21136, 90 FCC 2d 895 (1982); the Memorandum Opinion and Order in Docket 21136, 49 FR 13534, April 5, 1984; and the *Report and Order* in Docket No. 12-106 (Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations), _____ FR _____, _____.

(f) A noncommercial educational television station may interrupt regular programming to conduct fundraising activities on behalf of a third-party non-profit organization, provided that all such fundraising activities conducted during any given year do not exceed one percent of the station's total annual airtime. A station may use the prior year's total airtime for purposes of determining how many hours constitute one percent of its total annual airtime. With respect to stations that multicast programming on two or more separate channels, the one-percent annual limit will apply separately to each individual programming stream. For purposes of this paragraph, a non-profit organization is an entity that qualifies as a non-profit organization under 26 U.S.C. 501(c)(3).

(1) *Audience Disclosure.* A noncommercial educational television station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The station must air the audience disclosure at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

(2) *Reimbursement.* A noncommercial educational television station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization may accept reimbursement of expenses incurred in conducting third-party fundraising activities or airing third-party fundraising programs.

(3) *Exemption.* No noncommercial educational television station that receives funding from the Corporation for Public Broadcasting shall have the authority to interrupt regular programming to conduct fundraising activities on behalf of a third-party non-profit organization, absent a waiver granted by the Commission.

* * * * *

4. Section 73.3527 is amended by adding new paragraph (e)(14) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(14) *Information on Third-Party Fundraising.* For noncommercial educational broadcast 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), every three months, the following information for each third-party fundraising program or activity: 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 station participated in tallying or receiving any funds for the non-profit group, an approximation of the total funds raised. The information for each calendar quarter is to be filed 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.).

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ the Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking (*NPRM*) released in April 2012 in this proceeding.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. Pursuant to Sections 73.503(d) and 73.621(e) of the Commission's rules, a noncommercial educational (NCE) broadcast station may not conduct fundraising activities that substantially alter or suspend regular programming and are designed to benefit any entity other than the station itself.⁴ "Regular programming" includes programming that "the public broadcaster ordinarily carries, but does not encompass those fundraising activities that suspend or alter their normal programming fare."⁵ The third-party fundraising restrictions reflect the concern that "educational stations are licensed to provide a noncommercial broadcast service, not to serve as a fund-raising operation for other entities by broadcasting material that is 'akin to regular advertising.'"⁶ The *NPRM* sought comment on whether and under what circumstances to NCE stations should be allowed to conduct on-air fundraising activities that interrupt regular programming for the benefit of charities and other third-party non-profit organizations.⁷

3. The *Report and Order* revises the rules to allow NCE stations to conduct limited on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations. The *Report and Order* finds that relaxing the longstanding third-party fundraising restrictions will serve the public interest by enabling NCE stations to partner with charities and other non-profit organizations to raise funds for worthy causes. Third-party fundraising programs will also help to raise public awareness about important topics, such as poverty, health care, and humanitarian issues. The *Report and Order* concludes that permitting NCE stations to conduct limited third-party fundraising will not undermine the noncommercial nature of NCE stations or their primary function of serving their communities of license through educational programming.

4. The rules adopted in the *Report and Order* are intended to provide NCE stations the

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations*, Notice of Proposed Rulemaking, 27 FCC Rcd 4515, 4529-33, Appendix B (2012) (*NPRM*).

³ 5 U.S.C. § 604.

⁴ 47 CFR §§ 73.503(d) and Note, 73.621(e) and Note; *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 907, para. 20 (1982) ("[P]ublic broadcasters are generally prohibited from engaging in fundraising activities on behalf of any entity other than the licensee where such activities substantially alter or suspend regular programming."), *recon. granted*, Memorandum Opinion and Order, 97 FCC 2d 255, 264-65, paras. 19-20 (1984) (*Reconsideration Order*) ("In the absence of a waiver, noncommercial stations are prohibited from conducting any fundraising activity which substantially alters or suspends regular programming and [is] designed to raise support for any entity other than the station itself.").

⁵ *Reconsideration Order*, 97 FCC 2d at 264, para. 18.

⁶ *Ohio State Univ.*, Letter Order, 62 FCC 2d 449, 450 (1976) (quoting *Noncommercial Educational Stations*, 26 FCC 2d 339, 343, paras. 18-19 (1970)).

⁷ *NPRM*, 27 FCC Rcd at 4519, para. 8.

flexibility to conduct limited third-party fundraising, while minimizing any impact on the noncommercial broadcasting service. Specifically, these rules:

- Authorize NCE stations to conduct third-party fundraising that interrupts regular programming;
- Include an exemption from the rule authorizing NCE stations to conduct third-party fundraising which provides that no NCE station that receives funding from the Corporation for Public Broadcasting (CPB) shall have the authority to conduct third-party fundraising, absent a waiver granted by the Commission;
- Limit the non-profit organizations that are eligible beneficiaries of third-party fundraising to entities that are recognized as tax exempt, non-profit organizations under Section 501(c)(3) of the Internal Revenue Code;
- Authorize NCE stations to spend up to one percent of their total annual airtime conducting third-party fundraising;
- Require NCE stations that conduct third-party fundraising to air audience disclosures, at the beginning and ending of the fundraising programming and at least once during each hour of the program, that clearly state that the fundraiser is not for the benefit of the station itself and specifically identify the non-profit organization that is the intended beneficiary of the fundraising;
- Authorize NCE stations to accept reimbursement of expenses incurred in conducting third-party fundraising activities or airing third-party fundraising programs, but prohibit NCE stations from receiving “additional consideration” in exchange for conducting or airing third-party fundraising programs; and
- Require NCE stations that conduct third-party fundraising to include certain information relating to their fundraising activities in their public files.

B. Summary of Significant Issues Raised in Response to the IRFA

5. No comments were filed in response to the IRFA. One commenter raised concerns that the reporting requirements proposed in the *NPRM* could impose unnecessary burdens on small NCE licensees.⁸

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁹ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted herein.¹⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,”

⁸ Moody Comments at 7.

⁹ 5 U.S.C. § 604(a)(3).

¹⁰ 5 U.S.C. § 604(a)(3).

“small organization,” and “small governmental jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹³ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

8. **Television Broadcasting.** This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”¹⁴ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁵ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.¹⁶ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more.¹⁷ Based on this data, we therefore estimate that the majority of television broadcasters are small entities under the applicable SBA size standard.

9. The Commission has estimated the number of licensed commercial television stations to be 1,384.¹⁸ Of this total, 1,264 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE television stations to be 394.¹⁹ Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

10. We note, however, that in assessing whether a business concern qualifies as “small”

¹¹ *Id.* § 601(6).

¹² *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹³ 15 U.S.C. § 632.

¹⁴ U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁵ *Id.*

¹⁶ 13 C.F.R. § 121.201; 2012 NAICS code 515120.

¹⁷ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹⁸ *Broadcast Station Totals as of December 31, 2016*, Press Release (MB, rel. January 5, 2017) (*January 5, 2017 Broadcast Station Totals Press Release*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016>.

¹⁹ *January 5, 2017 Broadcast Station Totals Press Release*.

(continued....)

under the above definition, business (control) affiliations²⁰ must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

11. **Radio Stations.** This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”²¹ The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts.²² Economic Census data for 2012 shows that 2,849 radio station firms operated during that year.²³ Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.²⁴ Therefore, based on the SBA’s size standard the majority of such entities are small entities.

12. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of June 2, 2016, about 11,386 (or about 99.9 percent) of 11,395 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial radio stations to be 11,415.²⁵ We note that the Commission has also estimated the number of licensed NCE radio stations to be 4,101.²⁶ Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. We also note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.²⁷ The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

13. In addition, to be determined a “small business,” an entity may not be dominant in its field of operation.²⁸ We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may

²⁰ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 C.F.R. § 21.103(a)(1).

²¹ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²² 13 CFR § 121.201, NAICS code 515112 Radio Stations.

²³ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 (515112 Radio Stations)*
https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

²⁴ *Id.*

²⁵ *January 5, 2017 Broadcast Station Totals Press Release.*

²⁶ *Id.*

²⁷ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.” 13 C.F.R. § 121.103(a)(1).

²⁸ 13 C.F.R. § 121.102(b).

(continued....)

therefore be over-inclusive.

14. **Small Entities, Small Organizations, Small Governmental Jurisdictions.** Our proposed actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.²⁹ As of 2014, according to the SBA, there were 28.2 million small businesses in the U.S., which represented 99.7% of all businesses in the United States.³⁰ Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”³¹ Nationwide, as of 2007, there were approximately 1,621,215 small organizations.³² Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”³³ Census Bureau data for 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.³⁴ We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”³⁵ Thus, we estimate that most governmental jurisdictions are small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

15. The *Report and Order* requires NCE stations that choose to conduct third-party fundraising to include certain information concerning their fundraising activities in the public files. Specifically, NCE stations that conduct third-party fundraising must place in their public files, on a quarterly basis, the following information for each third-party fundraising program or activity: 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 of the total funds raised.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of

²⁹ See 5 U.S.C. § 601(3)-(6).

³⁰ See SBA, Office of Advocacy, “Frequently Asked Questions”, <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (last visited Mar. 2014).

³¹ 5 U.S.C. § 601(4).

³² INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

³³ 5 U.S.C. § 601(5).

³⁴ U.S. Census Bureau, Statistical Abstract of the United States: 2012 at 267, Table 429 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

³⁵ The 2012 U.S. Census data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, City and Town Totals Vintage: 2011, <http://www.census.gov/popest/data/cities/totals/2011/index.html> (last visited Oct. 20, 2016). If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

(continued...)

compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”³⁶

17. The *NPRM* in this proceeding sought comment on whether to require NCE stations that conduct third-party fundraising to file annual reports on their fundraising activities and to require NCE stations to place these reports in their public files. In order to address the concerns that reporting would place unnecessary burdens on small NCE licensees³⁷ and to minimize burdens on NCE stations, the *Report and Order* declines to adopt the reporting requirement and instead simply requires NCE stations that conduct third-party fundraising to place certain information concerning their fundraising activities in their public files on a quarterly basis and only if there was fund-raising activity for that quarter. Additionally, the *Report and Order* adopts an exemption from the rule authorizing NCE stations to conduct third-party fundraising which provides that no NCE station that receives CPB funding shall have the authority to conduct third-party fundraising, absent a waiver granted by the Commission. This exemption is intended to ease the potential burdens that the revised rules may place on CPB-funded NCE stations, the majority of which are opposed to revision of the rules to allow third-party fundraising.

Report to Congress

18. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³⁸ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.³⁹

³⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

³⁷ Moody Comments at 7.

³⁸ 5 U.S.C. § 801(a)(1)(A).

³⁹ *Id.* § 604(b).