

ALERT

# FCC Seeks Comment on Relaxing its On-Air Fundraising Rules for NCEs

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April 27, 2012

On April 26, 2012, the Federal Communications Commission (FCC or Commission) issued a Notice of Proposed Rulemaking (NPRM) seeking comment on whether to allow noncommercial educational (NCE) broadcast stations to conduct on-air fundraising activities to raise money for charities and other nonprofit organizations. Currently, NCE stations are prohibited from interrupting regular programming to conduct fundraisers for third party entities absent a waiver, but may conduct fundraising activities for their own financial benefit.

In the NPRM, the FCC proposes allowing public broadcasters to spend a "modest amount" of their total broadcast time—up to one percent per year—conducting on-air fundraising activities for charities and other nonprofits. The proposal would eliminate the need for NCE stations to seek a waiver to conduct fundraising in response to catastrophic events such as Hurricane Katrina or the September 11, 2001 terrorist attacks.

In addition to asking whether lifting the third-party fundraising ban would serve the public interest, the Commission seeks comment on a variety of related issues, including: how to define the class of nonprofit entities that would benefit from third-party fundraising; whether durational limits should be imposed on a station's fundraising efforts; whether the submission of annual reports should be required of NCE stations engaging in third-party fundraising; and whether NCE stations should be required to certify in their renewal applications that they have complied with any limits on third-party fundraising.

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## Practice Areas

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Media

The Commission also seeks comment on Section 399B of the Communications Act, which prohibits NCE stations from airing political and issue advertisements in exchange for "remuneration." The Commission asks whether "remuneration" includes repayment of a station's expenses associated with a fundraising activity and whether Section 399B places any other limits on the revision of the NCE fundraising rules. The Commission also announced that, in response to the Ninth Circuit's April 12, 2012 decision striking down Section 399B as unconstitutional, it will not enforce Section 399B's ban in the Ninth Circuit after the court's mandate goes into effect.

Comments are due 30 days after publication in the Federal Register. Reply Comments are due 60 days after Federal Register publication.