

ALERT

# FCC Releases Draft Orders that Would Eliminate FRN/RUFRN Requirement for NCEs and Allow NCEs More Flexibility to Conduct Third Party Fundraising

April 4, 2017

On March 30, 2017, the Federal Communications Commission (FCC or Commission) released two draft items that, if adopted at the Commission's April Open Meeting, would reduce regulatory burdens on noncommercial educational (NCE) broadcasters.

## FCC Form 323-E and Permissive Use of SUFRNs

The first item is a draft Order on Reconsideration (Draft Recon Order) that would roll-back a requirement that officers, directors, and other individuals with attributable interests in NCE stations obtain FRNs or "Restricted Use" FRNs (RUFRNs) for purposes of completing and filing ownership reports. To obtain an FRN or RUFRN, an individual must disclose his/her social security number, date of birth, or other personal information. NCE broadcasters objected to the requirement, adopted in January 2016, and argued that such disclosure would discourage volunteers from serving on the governing boards of NCE stations and pose unique challenges for board members who are politically elected or appointed.

The Draft Recon Order provides relief to NCE filers by allowing them the option of utilizing so-called "Special Use" FRNs (SUFRNs), which do not require disclosure of personal information. Under the rules promulgated in January 2016, NCE filers were permitted to report an SUFRN for an attributable individual only after they had undertaken reasonable and good-faith efforts to obtain the information needed to report a FRN or RUFRN, including informing an individual about the

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risk of enforcement action should he or she choose not to provide his or her personal information to the Commission. The Draft Recon Order eliminates the reasonable and good faith effort requirement, and allows any attributable interest holder of an NCE station who has not obtained an FRN or RUFNR to use (or continue to use) a SUFRN. The Commission emphasizes, however, individuals who do not object to the disclosure of their personal information should obtain an FRN or RUFNR. In addition, SUFRNs must be used consistently – if an SUFRN was reported previously for an individual and the individual does not have a FRN or RUFNR, the same SUFRN must be reported on a going-forward basis. Furthermore, if an individual is reported on multiple reports, the same SUFRN must be used consistently on all reports.

In the Draft Recon Order, the Commission finds that, in adopting the FRN/RUFNR requirement, the then-Democratic majority Commission erred in rejecting the valid concerns raised by NCEs regarding the potential impact of the requirement. The Draft Recon Order states that the Commission “should have given more credence to the concerns raised by NCE broadcasters, particularly given their representations that these concerns were based on their experience with the day-to-day operations of their stations and interactions with volunteers serving on their governing boards.”

#### Relaxing Restrictions on Third-Party Fundraising

The second item is a draft Report and Order (“Draft R&O”) that would revise the FCC’s rules to allow NCE stations that do not receive CPB funding [1] to conduct limited on-air fundraising activities that interrupt regular programming to benefit third-party non-profit organizations. The Commission concludes in the Draft R&O 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.”

Currently, the Commission’s rules prohibit NCE stations from conducting fundraising activities that substantially alter or suspend regular programming and that are designed to benefit an entity other than the station itself. The Commission has granted waivers in extraordinary circumstances, including in the wake of the September 11<sup>th</sup> terrorist attacks and the January 2010 earthquake in Haiti.

The revised rule will allow NCE stations 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 a one percent annual airtime cap. The Commission characterizes the one percent cap, which equates to approximately 88 hours annually or 1.7 hours weekly for stations that broadcast 24 hours a day, as affording “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 their primary mission of providing educational programming to their communities.”

Recognizing that total airtime can vary year-to-year, the Draft R&O specifies that NCE stations can use the prior year’s total airtime for purposes of determining how many hours constitute one percent of their total annual airtime. As to multicast programming, the one percent annual limit will apply separately to each

individual programming stream. 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. The Commission declines in the Draft R&O to adopt any general limits on the duration of a specific fundraising effort.

The revised rule restricts the entities for which NCE stations may conduct third-party fundraising to 501(c)(3) non-profit organizations. The Commission explains that “[t]his prohibition reflects Congress’s concern that paid political advertising could alter the unique noncommercial, educational nature of public broadcasting.”

The Draft R&O further specifies that NCE stations conducting fundraising pursuant to the revised rule must air disclosures that clearly state that the fundraiser is not for the benefit of the station itself and that identify the non-profit organization beneficiary. Such disclosures must be made at the beginning and the end of the fundraising program and at least once during each hour of the program. No particular language is required.

The Draft R&O also states that NCE stations may accept reimbursement of expenses incurred in conducting third-party fundraising activities. Acceptable expenses that may be reimbursed include expenses incurred by the station in producing third-party programming, and the station’s operating costs in connection with the broadcast of third-party fundraising. However, NCE stations are prohibited from receiving any “additional consideration” in exchange for conducting third-party fundraising.

Finally, the Draft R&O indicates that NCE stations conducting third-party fundraising will not be required to submit reports to the Commission detailing their fundraising activities, but will be required to include “appropriate information” on their fundraising activities in public inspection 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: 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. 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.

[1] *The Draft R&O explains that CPB-funded stations are not afforded added fundraising flexibility because they had nearly unanimously opposed it during the comment period. However, to the extent that any individual CPB-funded NCE station would like to take advantage of the flexibility afforded by the revised rule, it may request a waiver.*